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Ontario Legislative Assembly Select
Committee on the New Ontario
Hydro Building

(42)

Hearings . v. 13 . Sept. 13 - Sept. 17, 1973.

Vol. 13

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, September 13, 1973

Morning session

2476-2512



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Sep. 13/73
10.22 to 10.25 a.m.
fvk

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee met at 10.22 o'clock, a.m., in the members' board room.

Mr. Chairman: Ladies and gentlemen, I ask the committee to come to order. Mr. Gathercole, is waiting and I understand you are ready to proceed with him, Mr. Shibley.

Mr. Shibley: Yes, thank you.
Mr. Chairman: Mr. Gathercole, you've been sworn before and, all being well, we're drawing to the point in our hearings where I don't think there's going to be an occasion for you to come back again, but anyway, on this occasion welcome back.

Mr. Gathercole: I'm delighted to hear the latter, Mr. Chairman.

Mr. Walker: Don't say nothing.

Mr. Shibley: Don't even tell us about any turbines at Niagara Falls.

I ask the clerk to show the witness exhibit 232, please. That's a letter that was recently produced, from Mr. Smith to Mr. Cronyn, dated April 14, 1972. Mr. Gathercole, have you ever seen this letter prior to today?

Mr. Gathercole: I saw it after it had been presented here at the hearing ~~before~~ a day or two ago.

Mr. Shibley: That was the first occasion?

Mr. Gathercole: Yes.

Mr. Shibley: I refer you to the postscript of that letter wherein it states: "I've just talked to Colin Brown, who is talking to George Gathercole, who said he was going to be talking to Darcy in the next month and thought we are one of the proposals being seriously considered."

That's the portion of the postscript ^{with} which I'm interested in dealing with you at this time. Did you have conversation with Colin Brown referable to the ~~the~~ Hydro head office building?

Mr. Gathercole: My recollection is that Colin Brown did call me on one occasion and asked me ^{whether} if we were going to proceed with the building. He mentioned during the course of

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(Mr. Gathercole)

that that Ellis-Don had been making a submission and asked me about it. That was all.

Mr. Shibley: When did that conversation take place?

Mr. Gathercole: Frankly, I don't know. It must have been some time in the — obviously it had to be before the date of this letter, but how much before that I don't know.

Mr. Shibley: It also appears to have been at a time when you were anticipating your trip to Japan with Mr. McKeough.

Mr. Gathercole: Yes. I must have communicated ~~some~~

(Tape H-2477 follows)

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M.R.

~~(4 - Shibley)~~
~~It also appears to have been by a plan and you were~~
~~anticipating your trip to Japan with Mr. McKeough.~~

~~Mr. Gathercole: Yes, that's right. I must have~~
~~commented~~ that to Colin that I would be going to ...

Mr. Shibley: Yes. When were your plans for your trip to Japan settled upon?

Mr. Gathercole: Maybe two or three weeks prior to that.

Mr. Shibley: Yes. So that we can take it that your conversation with Mr. Brown occurred in the interval of the last week of March or the first two weeks of April, 1972?

Mr. Gathercole: That's possible.

Mr. Shibley: Now, on that occasion, he having mentioned Ellis-Don to you, ~~you were~~ did you, in fact, tell Mr. Brown that you were about to be talking to Mr. McKeough, as the postscript indicates?

Mr. Gathercole: I have no recollection of doing so but I think from the content of this observation that I must have observed that.

Mr. Shibley: Yes. And having told Mr. Brown that you would be talking to Mr. McKeough, did you also tell Mr. Brown that Ellis-Don would be one of the ~~one~~ that I'm sorry, Ellis-Don was one of the proposals being seriously considered by Ontario Hydro?

Mr. Gathercole: I knew that Ellis-Don had made a submission which was ~~was~~ being analyzed by Mr. Candy. And I took it that it was being considered. Seriously considered.

Mr. Shibley: I see. Now, just in that respect, had you as at April 14 ~~—~~ I'm sorry, had you, as at the time of your discussions with Mr. Brown, been informed by Mr. Candy's memorandum of February 1, by Mr. Candy's and Mr. Mink's memorandum of April 10, or in any other manner, had you been

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informed that so far as the people who were under you and directly dealing with this matter were concerned, they were already recommending Canada Square as the developer to receive this project?

Mr. Gathercole: ~~_____~~

Wasn't the April 10 memorandum which zeroed ⁱⁿ on Horizon and Canada Square?

Mr. Shibley: That's correct.

Mr. Gathercole: But up to that time it seemed to me the field was wide open and then that ~~it~~ was ~~their~~ their deduction.

Mr. Shibley: Yes. Well, had you even earlier than that memorandum been appraised of the fact that the choice had narrowed down in a manner that excluded Ellis-Don as a developer whose proposal was being considered seriously?

Mr. Gathercole: No.

Mr. Shibley: In any event, ~~_____~~ you had this discussion with Colin Brown. What was the purpose of the conversation between you?

Mr. Gathercole: I think Colin Brown was simply bringing to my attention that Ellis-Don were making a proposal.

Mr. Shibley: What interest would Colin Brown have in discussing that with you?

Mr. Gathercole: I don't think any interest other than a friend, I suppose, ~~it~~ you might describe one in that way, an acquaintance. I suppose they had had relationships before of one sort of a social nature and that was his purpose in calling. I think it was in connection with another matter. We at one time had been contemplating having a golf game down South and I think ^{it} emerged out of that conversation.

Mr. Shibley: Well, did this amount to Colin Brown putting in a good word with you on behalf of Ellis-Don?

Mr. Gathercole: I think he was fulfilling an obligation, in this sense, that maybe Don Smith had called him

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and asked him if he would try and ascertain what the situation was with respect to his proposal and he was just fulfilling an obligation. He wasn't urging me that the contract should go to Ellis-Don. He certainly didn't do that.

Mr. Shibley: Was there ever any mention made in the course of the conversation that Mr. Smith was a contributor to the Progressive Conservative Party?

Mr. Gathercole: No. No. Absolutely not.

H-2478 to follow

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D.L.

~~_____~~
~~_____~~
Mr. Renwick: Mr. Chairman, let's go back one question. My recollection of Mr. Smith's evidence as it came through to us about the origin of the idea that Colin Brown would call you is that ~~_____~~ Mr. Smith and Colin Brown have luncheon together a couple of times a week, that it was out of a luncheon discussion, and for practical purposes Mr. Smith left the impression that the initiative came from Colin Brown, that he, Colin Brown, would call you about it. Now ~~_____~~ I understand luncheon discussions ~~_____~~ as to where the initiative came from, but the suggestion ^{for effective} ~~_____~~ purposes was that this would be helpful to his friend, Don Smith, for him to call you. Now would it be helpful for Colin Brown to call you on a matter like this?

Mr. Gathercole: It wasn't in this case and as far as I am aware it never has been in other cases.

Mr. Renwick: How long have you known Colin Brown?

Mr. Gathercole: Oh, I've known Colin Brown for ten years or more.

Mr. Renwick: Well?

Mr. Gathercole: Well, we have an occasional golf game together.

Mr. Renwick: You classify yourself as reasonably good friends in a business sense or in a social sense.

Mr. Gathercole: ~~_____~~ Just in ~~_____~~ I would say, ~~_____~~ a golfing sense, that we get together occasionally and have a game together.

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D.L.

Mr. Renwick: Did you know that Colin Brown was a supporter of the Progressive Conservative Party?

Mr. Gathercole: Oh yes.

Mr. Renwick: What more did you know about Mr. Brown?
We are having trouble finding out whether Mr. Brown does anything other than publish ads in the Globe and Mail.

Mr. Gathercole: Well, I would say Colin —

Mr. Renwick: And sell insurance.

Mr. Gathercole: No, he's been a very successful entrepreneur.

Mr. Renwick: We understand that but —

Mr. Gathercole: I mean in a business way, Mr. Renwick, and he's a very interesting individual. Let me say that.

Mr. Renwick: How would you classify him with respect to the Progressive Conservative Party in so far as his activities are concerned?

Mr. Genest: Is Mr. Gathercole supposed to be an expert on the affairs of the Progressive Conservative Party?

Mr. Renwick: Not necessarily an expert but knowledgeable, shall we say.

Mr. Gathercole: Well, I'm not knowledgeable so much on the political side, although I have been involved in policy formulation, but not on the political side. But I have been acquainted with the fact that Colin Brown ~~is a Conservative~~ ^{has} I believe been a Conservative and has Conservative affiliations over the course of time, and I don't know whether he has them with the Liberal Party either because he's a damn good friend of Joe Jeffreys.

Mr. Renwick: Could I put —

Mr. Gathercole: A lot of these people do business, you

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know, with Liberals.

Mr. Renwick: There are a lot of supporters of the Provincial Conservative Party who have very close federal Liberal connections. But would you, can I put words in your mouth, would you call him an active aggressive supporter of the Progressive Conservative Party in the province of Ontario in the area of London, Ontario?

Mr. R. G. Hodgson: Maybe you could ask ~~whether~~ him ^{whether} ~~about~~ provincial or not.

Mr. Renwick: Provincial, yes.

Mr. Gathercole: I would say that Colin is interested in a number of ventures, Ontario english-speaking, french-speaking relations would be ~~one~~ ⁱⁿ ~~the~~ developments of relationships with other countries.

Mr. Renwick: No, I'm speaking of—

Mr. Gathercole: I know you are, but all I'm saying is that I think that he is interested in the operations of the governmental system in Canada.

Mr. Renwick: No, is he an active aggressive supporter of the Progressive Conservative Party? Would you classify him in these terms?

Mr. Gathercole: To what extent he would be that, I do not know. I know that he is closely identified with many Progressive Conservative figures but I know also that he is in very close terms with Liberals as well. Maybe N.D.Pers, ~~and~~ I don't know. I'm not that close to him. ^{He} ~~we~~ play golf, that's all.

Mr. Walker: He's a very good friend of Stephen Lewis.

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Mr. Shibley: Mr. Gathercole, have you told us the whole of the content of your conversation with Mr. Brown?

Mr. Gathercole: Yes I have, Mr. Shibley. As far as I can recollect it was quite an innocent call. He brought the question up of



(Tape 2479 follows)

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(Mr. Gathercole)

~~As you know, as far as I can recall, it was quite an innocent~~
~~call, he brought the question up of~~ ^{which} Ellis-Don had made a proposal, and
were they in the running; and I said they were in the running.

Mr. Shibley: Yes. Did you have any further conversations
with Mr. Brown at any time?

Mr. Gathercole: No, no.

Mr. Shibley: When you were on the plane with Mr. McKeough
did you discuss Ellis-Don with Mr. McKeough?

Mr. Gathercole: I did not. Absolutely I did not, no.

Mr. Shibley: You had no discussion with Mr. McKeough about
Ellis-Don?

Mr. Gathercole: No -- none whatsoever. Now, that may seem
strange, ~~as Shibley~~ but I didn't. I interpreted the telephone call
to be one ~~that~~ ^{which} Colin was fulfilling an obligation, I said that Ellis-
were in the running and I assumed that he would be going back to Don
Smith and communicating with him.

Mr. Bullbrook: Mr. Shibley, you should give Mr. Gathercole
the advantage of Mr. McKeough's response, because -

Mr. Shibley: Well, I was just checking with Mr. Bell to
make sure my memory was correct.

Mr. Bullbrook: Mr. McKeough, Mr. Gathercole, for your
information, and you might not have had a discussion, I think it's
a question of ~~words~~ ^{words}, but in fairness to you you should know that
Mr. McKeough advised us under oath that you had told him the names
of all the companies ^{that} ~~the~~ were making proposals. Whether that's a
discussion of Ellis-Don, I don't know, but in fairness to you
you should know that.

Mr. Gathercole: I read -

Mr. Shibley: Well, I don't think he said all of the
proposals.

Mr. Gathercole: NO.

Mr. Bullbrook: ^{Oh,} I'm sorry; I thought he did.

Mr. Gathercole: No.

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Mr. Shibley: He said he ~~mentioned~~ mentioned Horizon, Y and R and Ellis-Don. He didn't say he ~~mentioned~~ mentioned Canada Square.

Mr. Bullbrook: Oh, I'm sorry.

Mr. Shibley: That's all right; I'm just checking to make sure before I ~~present~~ present it to him.

Mr. Gathercole: I read Mr. McKeough's evidence on that.

Mr. Shibley: Oh, you did read it.

Mr. Gathercole: Yes, I did, and -

Mr. Shibley: All right, thank you, so that when you gave your testimony a few minutes ago you read it with an understanding of ~~what~~ what Mr. McKeough had said.

Mr. Gathercole: Yes; I thought Mr. McKeough had wavered a little bit on it. He said at one time that he was sure that I had mentioned some of the names, and ~~at~~ another time he says, "Well, I ~~do~~ think so", or, "I wasn't sure". And this was my reading of his evidence. But my recollection is, I didn't mention the names of the developers because I didn't know all of them. And my recollection is that I didn't ~~mention~~ mention the developers' names to him. ~~He didn't~~

Mr. Shibley: You did not.

Mr. Gathercole: Yes, I did not. That's my recollection.

Mr. Bullbrook: Would you permit me ^{just} ~~for~~ for a moment, I want you to understand, Mr. Gathercole that -

Mr. Gathercole: I'm not denying maybe, that I had, but perhaps he might have picked up the ~~the~~ names from the conversation, you know, the discussions, the hearings.

Mr. Shibley: Mr. Gathercole, ~~He didn't~~ I will give you this much also. Mr. Nastich had in his possession the April 10 memorandum which contained the details of the names and content of the submissions of the four developers, did he not?

Mr. Gathercole: Well, I had a copy of it, I don't think Milan ~~(Mr. Nastich)~~ did, but I'm not sure of that.

Mr. Shibley: So that -

Mr. Gathercole: I had a copy of it which I took and discussed with -

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B.G.

Mr. Shibley: Yes, so from that document itself you would know who the develop~~ers~~^{ers} were.

Mr. Gathercole: Yes, I knew ~~the~~ the four or five develop~~ers~~^{ers} there, but I didn't know whether there were others.

Mr. Shibley: ~~Yes~~^{Yes} we are only talking about the ones that are really referenced in that report. ~~So~~^{So} that you did know at the time of your trip to Japan?

Mr. Gathercole: Yes, I did, yes.

Mr. Shibley: And you had the report with you for the purpose, I take it, of discussing its content with Mr. McKeough, did you not?

Mr. Gathercole: ~~Yes~~ I took the report with me to discuss the contents of it with Milan Nastich and not with Darcy McKeough.

Mr. Shibley: I see.

Mr. Gathercole: The question I ~~was~~ was raising with ~~Mr.~~ Darcy McKeough related to ~~whether~~ whether it was the Treasury's current policy that Hydro ^{which} ~~was~~ going to proceed with its office building, should go the lease-purchase route or whether it could obtain funds through the issue of its bonds, guaranteed by the Province. That was my essential question that I was raising with Mr. McKeough.

Mr. Shibley: Well, just on that score, Mr. Gathercole, while we are on the question of guarantees. Was the matter of a provincial guarantee for this transaction ever taken up by you ~~with~~ with anyone in government?

Mr. Gathercole: That is the Ontario Hydro - Canada Square agreement?

Mr. Shibley: Yes.

Mr. Gathercole: No, absolutely not. The first I ever heard of it was when it surfaced, as the word had ^d become, at this hearing.

~~Mr. Shibley: Yes, right. So that any~~

(Tape H-2480 follows)

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H-2480-1

~~Mr. Shibley: Right. So that any references to a provincial guarantee in the documentation or testimony of others is not to be taken as an indication that you, or anyone on your instructions, made any approach to the provincial government to provide a guarantee for this transaction. Is that correct?~~

Mr. Gathercole: That is absolutely correct.

Mr. Gathercole: And the first time you had any awareness that representations were being made or documents created which included a provincial guarantee was through this hearing. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And similarly, have you any knowledge or information as to any actual or contemplated application to the Treasury Board respecting this transaction?

Mr. Gathercole: None whatsoever.

Mr. Shibley: Now, just returning to this conversation on the airplane with Darcy McKeough, did you tell Mr. McKeough that you had been spoken to by Mr. Brown?

Mr. Gathercole: No, I didn't

Mr. Shibley: You subsequently received a communication from Ernie Jackson around the early part of July on behalf of Mr. Smith, did you? Asking ^{for} you to ~~either~~ meet with Mr. Smith?

Mr. Gathercole: Yes, a telephone call.

Mr. Shibley: And again, in that respect, was Mr. Jackson someone who was, so to speak, interceding on Mr. Smith's behalf, to get him a meeting with you?

Mr. Gathercole: I would say that was so.

Mr. Shibley: You attended a reception, I don't know whether it was ~~for~~ for or by Mr. Jackson, in December of 1972. Did you have any conversation with Mr. Jackson on the occasion of that reception? It was December 14th. Referable to Ellis-Don?

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B.A.

Mr. Gathercole: No.

Mr. Shibley: Or referable to the Hydro head office building?

Mr. Gathercole: None whatsoever. It was on a fund raising thing, for St. Paul's.

Mr. Genest: For what?

Mr. Gathercole: St. Paul's Cathedral, London, England.

Mr. Bullbrook: Could we call St. Paul?

Mr. Shibley: I do every Sunday.


Mr. Gathercole: Who else would be left?

Mr. Shibley: I want to take you to July 18, 1972,

Mr. Gathercole, which has become a somewhat significant date. It was the day of a meeting which Mr. Candy had with Mr. Moog and Mr. Coles respecting which, Mr. Moog compiled a memorandum. I don't know whether you have examined that memorandum. Perhaps it should be produced to you. It is Exhibit 211. But it is also the day that you had a ~~xxx~~ meeting with Mr. Candy and Mr. Dean.

Mr. Genest: And Mr. Gordon was there, wasn't he?

Mr/ Shibley: And Mr. Gordon. It was Mr. Gathercole, Mr. Candy, Mr. Dean, Mr. Gordon and it happens to be the day immediately preceding ~~the~~ the date of the meeting of the commissioners at which approval was given to enter into a contract with Canada Square. Now, I don't want you to be overly distracted by Exhibit 211, Mr. Gathercole. I just give it to you as some information as to what Mr. Candy is said to have discussed with Mr. Moog. I have to tell you that the document has been discredited by both the evidence ^{of} ~~that~~ Mr. Candy and Mr. Coles, as to the accuracy of some of the statements it contains, but what it does ~~do is indicate that there had been conversation~~



(Tape H-2481 follows)

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(Mr. Shibley)

~~the accuracy of some of the statements is contained,~~
but, what it does do is indicate that there had been conversation between Mr. Candy and representatives of Canada Square referable to the formula for costing the building, the \$34.00 formula. I also want to refresh your memory by telling you that in a memo of July 19, Mr. Candy ~~indicates~~ indicates that he told the commissioners on that date that Mr. Moog ~~anticipated~~ anticipated full Swiss financing for the project which — I don't want to put the emphasis on the Swiss, I want to put the emphasis on the fact that this ~~xxxxxx~~ was going to be inexpensive money if it came from Switzerland. And we also know that Mr. Moog was, in fact, still working on arranging Swiss money, because he was dealing with Ames on that basis on July 25. We also know that, on July 18, I believe, Mr. Moog was telling Mr. Candy that it would be a ~~\$20 million~~ \$20 million deal spread over a year, and so on. What I want to know is what was the subject of the conversation that you, Candy, Dean and Gordon had on July 18 preceding the commission meeting?

Mr. Gathercole: As far as I can recollect, the substance of our discussion would be the general terms of the proposals that were going to be presented to the commission meeting, and to the commissioners, the next day.

Mr. Shibley: In particular, did you discuss with Mr. Candy the fact that the \$34.00 was to be computed on the basis of certain elements, namely, cost of construction, design and interim finance costs? Was that discussed at that meeting?

Mr. Gathercole: Not in detail. As nearly as I can recall there would be some general discussion as to the validity of \$34.00 as being representing what would be required in order to obtain a satisfactory quality building.

Mr. Shibley: Did you discuss the fact that money, at lower interest rates, ~~was~~ now anticipated for the full amount of \$40 million?

Mr. Gathercole: The level of interest rates was in a state of flux and I wasn't impressed by the figures that might

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(Mr. Gathercole)

be given for some Swiss financing. I mean, if it was put at 5 1/2 or 6 per cent it depends on how much you have to pay to get the money, but at that stage we weren't —

Mr. Shibley: This appears to have been a fairly important meeting. You've got the people there that really were most ~~the~~ closely connected with the project and, obviously, it must have related to the ^{impending} ~~attending~~ commissioners' meeting of the following day.

Mr. Gathercole: It was, yes.

Mr. Shibley: What is your best recollection of the topics that were under discussion at that meeting?

Mr. Gathercole: I think my best recollection is as to the proposals that were made by the several developers; as to how they might be compared and rated; as to the cost of the building and, in general, how we might proceed to appraise and arrive at a conclusion as to what would be the best proposal to accept.

Mr. Shibley: Was it impressed upon you, at that time, and again upon the commissioners on the occasion of their meeting of July 19, that the developer that you were selecting, ~~the~~ namely, Canada Square, was the one developer whose proposal was not firm in certain respects? I'm thinking of the financial aspects of the proposal.

^{general}
Mr. Gathercole: I don't understand that ~~your~~ question, Mr. Shibley.

Mr. Shibley: Well, to begin with it was not ~~a~~ clearly defined as to whether a Crown corporation need be established. Is that not so?

Mr. Gathercole: Mr. Shibley, I had heard no discussions about the establishment of ^a ~~the~~ Crown corporation for some purpose related to this building.

~~Mr. Shibley: Mr. Gathercole, again, in the submission of Canada Square~~

(Tape H-2482 follows)

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C.B.

(Mr. Gathercole)

~~for some purpose related to the building~~

Mr. Shibley: Mr. Gathercole, again in the submission of Canada Square it talks in part as to its financing ~~and~~ the need to have a corporation formed to assist them, etc. That had not been resolved as yet.

Mr. Genest: It ~~doesn't~~ ^{doesn't} say that, Mr. Shibley, it is a very vague wording about ~~it~~.

Mr. Shibley: It certainly is.

Mr. Genest: ~~we~~ we need your cooperation in setting up the corporate structure.

Mr. Bullbrook: It says these arrangements have not been finalized and ~~we will require your~~ full cooperation in assisting to set up the necessary corporate structure to be able to complete them.

Mr. Shibley: Yes, well your full cooperation means the cooperation of Hydro to set up the necessary corporate structure. Were you ever given any understanding as to what Canada Square meant when they made that part of their submission?

Mr. Gathercole: No, I'm sorry Mr. Shibley this proposal to establish some corporation ~~in~~ ^{the purpose of} which for erecting the building or receiving tax savings was not discussed by me. Now, mind you, if in some earlier discussions to circumvent the restrictions on our raising the money in Europe, if we had to have some vehicle whatever it might be to obtain funds on an economical rate, that might have had some appeal to us. But we hadn't discussed it and certainly we had no intention of setting up a corporation to achieve some tax savings.

Mr. Shibley: Are you telling also that at the meeting of July 18 and again on the 19th, when Candy reported that the developer anticipated that his whole financing would be Swiss

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C.B.

(Mr. Shibley)

this did not impress upon the commissioners that money at less cost, less interest rate, would be available for the project, if you dealt with Canada Square?

Mr. Gathercole: Yes, one of the factors in the selection of Canada Square was its experience in raising money and gaining access to money at a favourable rate, because we know if the developer has to pay a high price, one ~~or~~ ~~xxxx~~ way or another you are going to in the end, the client is going to pay for it.

Mr. Shibley: I understand that, Mr. Gathercole, and that's the only point I'm trying to establish through you and that is, that you and the commissioners were influenced by the understanding you had that cheap money would be available through Canada Square when you made your decision on July 19. Is that right?

Mr. Gathercole: The most economical money in sufficiency to do the ~~xxx~~ job.

Mr. Shibley: Right, and that was a major consideration, a major selling point, so to speak, of the Canada Square proposal. Is that right?

Mr. Gathercole: It's experience, it's experience ~~with~~ ~~that~~ with the OISE building.

Mr. Shibley: When you say it's experience, ~~you are also~~ you also had in mind the representations that were being made to the commissioners through Candy that it would be less expensive because of European sources of funds available to Canada Square. Isn't that so?

Mr. Gathercole: We believe for a developer to have access to a number of markets, capital markets, is an advantage, ver definitely. But we're not mesmerized by the idea that money is exceptionally cheap in Switzerland or Europe.

Mr. Shibley: Mr. Gathercole, I'm sorry to jump around on topics but you are ~~xx~~ only here on recall to clean up a few points. We now have evidence that there were telephone communication

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C.B.

(Mr. Shibley)

between Mr. Moog and ~~Mr.~~ - or there appeared to be telephone communications-between Mr. Moog and Mr. Westcott on any one of the following days possibly, May 2nd, May 4th and June 20th and 22nd of 1972. Neither of those gentlemen can give any explanation as to what they might have been discussing in those conversations. Do you have any knowledge or information as to any involvement of Mr Westcott referable to the Hydro head office building.

Mr. Gathercole: I have not.

Mr. Shibley: ~~WE~~ also have had evidence of a trip that the Premier made in August of 1971, ~~and I want to know~~
~~whether or not he was in the area of the Hydro head office building in August of 1971, the~~

H 2483 to follow

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DT

(Mr. Shibley)

and I want to know whether, following August of 1971, the circumstances of the Premier having travelled to Europe with Mr. Moog ^{well} ~~was~~ every the subject of comment or observation at any time in the environment of the Hydro office.

Mr. Gathercole: Absolutely not. I was ^{not} ~~was~~ aware of it in any way.

Mr. Shibley: Did you issue any instructions to ~~the~~ Mr. Dean as of the end of August? I am thinking particularly ~~a~~ around August 25th, 1972, with respect to the Head Office building?

~~Mr. Gathercole: I don't think I did.~~

Mr. Gathercole: I don't think I did. I would not have, in the normal course, and I mean, I don't think I did.

Mr. Shibley: Mr. ~~Gathercole~~ ^{Gathercole} --

Mr. Gathercole: I have no recollection of having done so. I may have, though.

Mr. Shibley: I am concerned that you be as precise as you can here because on August 25th, 1971, Mr. Dean became very active in respect to the building. He issued two memoranda that day and another on the 27th of August to three different departments within Hydro and I want to know whether you had any communication with him which led him to issue those memoranda.

Mr. Genest: This is 1971, isn't it?

Mr. Shibley: 1971.

Mr. Genest: I think your question said ¹⁹⁷² ~~88~~.

Mr. Shibley: I am sorry. I meant August, the end of -- August 25th, 1971. Thank you, Mr. Genest.

Mr. Gathercole: Not that I am aware of. I have no recollection of having done so.

Mr. Shibley: Did you in general have conversation with Mr. Dean respecting the Hydro head office building?

Mr. Gathercole: No, I did not.

Mr. Shibley: Was he the man in the financial end of Hydro that you sort of looked to to answer for the head office project?

Mr. Gathercole: I didn't assign John Dean to this

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(Mr. Gathercole)

role at all. I think it was Harold Banks who initially assigned John Dean to it and I had - as far as I am aware - no relationships with John Dean concerning the analyses that he was carrying out.

Mr. Shibley: All right, did --

Mr. Gathercole: Except in the receiving of the report and the meeting which we had which was on July 18th.

Mr. Shibley: Yes, did you give any instructions to Mr. Banks then which he might, in turn, have relayed to Dean?

Mr. Gathercole: None whatsoever.

Mr. Shibley: Now, then, on August 23, 1972, this is after the meeting of the commission approving of the contract, you had a meeting with Mr. McCallum that went on for an hour and a quarter, and I ~~can~~ might tell you that it was on the 18th of August of that year that Mr. McCallum was first advised that there would not be a source of funds for this project from Switzerland because of -- well, there just wouldn't be. I don't know that he was given the reason. Now, what was the topic of your relatively lengthy conversation with Mr. McCallum on August 23, 1972?

Mr. Gathercole: I would say that it would be related to the terms of the agreement or the negotiation of an agreement.

Mr. Shibley: Was the matter of the source of funds which were to be available to Mr. Moog one of the topics of discussion on that date?

Mr. Gathercole: Not as far as I am aware. There would have been no reason for me to discuss the source of Canada Square's funds at that time.

Mr. Shibley: Well, were you not interested in the terms of the permanent financing?

Mr. Gathercole: I felt this was a responsibility of Canada Square and that ultimately I would be advised where he was obtaining his funds.

(H-2484 to follow)

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M.R.

(Mr. Gathercole)

~~...that ultimately I would be advised as to where he obtained his funds.~~ But I'm sure we had no detailed ~~and~~ discussions about the source of funds and that was not a matter that we would likely have discussed.

Mr. Shibley: Well, all right. I put this to you only because, as I say, on August 4, Mr. Moog's efforts ^(got crossed up, or) respecting Swiss funds ~~were~~ cancelled out. Mr. McCallum became aware of that on the 18th. He had a meeting with you on the 23rd. There's no connection between them?

Mr. Gathercole: None whatsoever.

Mr. Bullbrook: I just want to ask Mr. Gathercole a question. Mr. Gathercole, something that causes me concern when you say that you - I don't want to paraphrase what you say - but you weren't aware or concerned with the terms of the permanent financing: If the rental rate had been a fixed one, was it not of concern to you that if the interest rate had increased that the quality of the building would have to necessarily decrease?

Mr. Gathercole: I would say that that is a real probability or possibility that it would be so. The rate of interest, as I've already given evidence on, was a matter of interest and concern to us. There isn't any question about that. What I was saying was that I felt that Canada Square or the developer who got the job should be in a position to have access to capital at an economical rate of interest, but he would have to pay whatever the market rate was at that time and I wasn't certain at that time as to whether he had his money locked up.

Mr. Bullbrook: Yes, well it's important to me, Mr. Gathercole, if you'd permit me, Mr. Chairman, for a moment, whether the commission ~~were~~ made themselves aware, or in making their decision had consideration for the fact that if you have a fixed rate of rental and if you increase the ^{interest} ~~rental~~ rate then the capital expenditure would have to decrease, having regard to the fact that the combination of construction cost and

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financing led to the established rental rate. I just wanted to make sure you knew that.

Mr. Gathercole: Well, I don't follow that,

Mr. Bullbrook, because we have a fixed rental agreement and if he - if the developer has to pay more by way of outlay for his money he has to assume the risk for that. But on the other hand, you are better to go with a developer who has access to relatively cheap money or less expensive money.

Mr. Bullbrook: Thank you.

Mr. Shibley: When did you first become aware that it was Ellis-Don, and particularly Don Smith, which was the developer complaining about the manner in which Hydro had let this contract?

Mr. Gathercole: Well, Mr. Chairman and gentlemen, I didn't know until the early part of May, 1973. And that is just as true as I can be at any time. I did not know until Mr. Seguin disclosed the letter to all - I think, all the commissioners and myself at the same time. I had assumed it was someone else, completely different.

Mr. Shibley: So that you are saying that not until following the press report on April 28th, the convening of this committee on May 1st, did you become aware of the identity of the developer who was complaining?

Mr. Gathercole: Completely, absolutely true.

Mr. Shibley: And in that connection now, Mr. Gathercole, I remind you that Mr. Cronyn was aware of the complaints of Ellis-Don as early as July, 1972, he never mentioned it to you?

Mr. Gathercole: Never. As a matter ~~of~~ of fact, John Cronyn never spoke to me about the Hydro building at any time.

Mr. Shibley: All right. And Mr. Fleck was aware of the identity of Ellis-Don as the complaining developer at least as early as November 7, 1972. He never mentioned it to you?

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Mr. Gathercole: Jim Fleck never mentioned it to me at any time. It came to me as a complete shock. I was astounded when I learned that it was Don Smith or Ellis-Don.

Mr. Shibley: And Mr. Dillon knew that Ellis-Don was ~~was~~ the complaining developer as early as August of 1972 and he never mentioned it? Is that right?

Mr. Gathercole: That is correct.

H-2485 to follow

~~as early as August of 1972, and he never mentioned it. Is that~~
~~right?~~

Mr. Shibley: Were you aware of the rumoured press investigation in November of 1972?

Mr. Shibley: ~~xxxxx~~ I'm sorry, let me collect the question this way. There was rumour of a press investigation in November; there were Mr. Nixon's questions tabled on December 1; there was the request for answers that you provided on December 14 of 1972; there was a narrative prepared; Are you saying that throughout that course of events at no time did you make inquiry or were you informed by anyone or by any source that Ellis-Don was the developer that was complaining?

Mr. Renwick: Mr. Chairman, one question, When Mr. Smith visited your office, and, in Mr. Smith's term, if I can translate it into the brush-off on July 1 sometime prior to July 14th, but subsequent to the June 29 meeting of the Commission 1 did you inform Mr. Smith that for practical purposes ~~the~~ the game was over so far as he was concerned?

Mr. Gathercole: ~~Did you have any sensation from Mr. Smith~~
 Mr. Renwick: Did you have any sensation from Mr. Smith

Mr. Gathercole: Oh, I beg your pardon. Are you referring now to the July 13th *meeting*?

Mr. Gathercole; If you're referring to the July 13th meeting, that's different. When Mr. Smith came into see me at that meeting, he never complained, and I'm puzzled by it; I mean he's there, why doesn't he say?

Mr. Genest: I think Mr. Gathercole has already testified on that.

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Mr. Gathercole: I did say at that time that it looked as if it wasn't going to him, or that it was likely to go to Canada.

Mr. Shibley: To be fair to the witness, I think ~~Mr.~~ testimony, ~~his testimony~~ in essence, was that he was still holding out to get the job and you don't criticize when you are still trying to sell.

Mr. Renwick: I understand that. I'm just saying that at that meeting, did not that give you some reason to believe, ~~that~~ either at that time or subsequent time, that amongst those very few people who would be upset by not getting the job, that this Ellis-Don would be one of them?

Mr. Gathercole: No, no. As I say, I was ^{astounded} ~~astounded~~ because after all Ellis-Don has done very well; he had a big programme on, and so on, and so on. I was ~~am~~ astounded.

Mr. Shibley: *Mr. Gathercole — I'm sorry, Mr. Renwick.*
Mr. Renwick: But despite the fact that Colin Brown had spoken with you directly about him in April, or thereabouts, and again that Mr. Jackson had called and arranged a specific appointment, you just ruled out Ellis-Don as a person who would complain?

Mr. Gathercole: I did, yes. I thought it was somebody else who had not made a submission. *And I would —*

Mr. Renwick: Did you have, with respect to Y and R, and with respect to Horizon, did you have any other calls come to you about them, putting in a good word for them, the way Mr. Smith had?

Mr. Gathercole: Not that I recollect, no. I'm sure I didn't.

Certainly
Mr. Renwick: *A* ~~there's~~ nothing in the evidence which would indicate that Mr. Tatham or those associated with him called in aid anyone to support them other than people within their own organization.

Mr. Gathercole: That is correct.

Mr. Renwick: And there's nothing in evidence which would indicate that Horizon asked anybody around the periphery to call in or to make an appointment.

Mr. Gathercole: No.

Mr. Renwick: And the only evidence that there is of someone ~~is~~ putting in a good word was ^{that} Colin Brown had called, and then right ~~at~~ in the period, between ~~JUNE 29th and~~ 29th and July 19th, Ernie Jackson call~~ed~~ for you to see Smith. And yet, despite the fact that he's the only one that has this sort of peripheral connection, your mind went blank on him as a person who could be considered disgruntled if this, if he didn't get the job?

(Tape H-2486 follows)

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B.A.

H-2486-1

~~Your mind went blank on him as a person who could be considered disadvantaged in this, if he didn't get the job.~~

Mr. Gathercole: I wouldn't say it went blank, but had Ernie Jackson or Colin Brown indicated to me that ~~Ernie~~ Don Smith ~~was~~ ~~already~~ feeling as if he wasn't getting a fair shake, then I would have looked into the matter but, as it was, I received a number of calls of this nature, there was no great persuasion being exercised by Ernie Jackson or Colin Brown, it was just a polite -- and they don't do that sort of thing as far as I am aware.

Mr. Renwick: I perceive it that way.

Mr. Gathercole: And I didn't pay any heed to it. ^{I said} the matter is being sorted out and it is going to be analysed and the recommendations are going to come to me. I am not going to interfere with the studies that are going on.

Mr. Renwick: I ~~do~~ understand that and I understand that the call from Colin Brown ~~was to~~ put in a word for Mr. Smith, that the call from Ernie Jackson was at Smith's request to make an appointment, which he did. There was nothing in the nature of ~~of~~.

Mr. Gathercole: Which I would have done for almost anybody.

Mr. Renwick: ~~arm~~ twisting about it, or anything like that. And Mr. Smith's evidence, of course, ^{is that} if ~~there~~ there was any chance up until he heard specifically that ^{he was} ~~he was~~ going to ~~lose~~ lose the contract, he wouldn't be indicating up to that point that he would be complaining. ~~But~~ I hear what you say but I find it difficult to understand that having had those calls ^{and} and I think it is fair to say that at one point, in any event, Mr. Jackson was considered an influential person in government circles.

Mr. Gathercole: He ^{was} ~~is~~ a member of the Legislature.

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Mr. Renwick: Yes. That one would rule out — ~~even~~

Mr. Deans: It was after that.
~~Mr. Renwick:~~ I put it quite bluntly, that I ~~think~~ think that Mr. Jackson carried a lot of weight during John Roberts' premiership of the province.

Mr. Gathercole: I agree.

Mr. Renwick: Obviously, subsequent to that date, he carried somewhat less weight.

Mr. Genest: He lost a few pounds.

Mr. Walker: Just another insurance agent.

Mr. Renwick: I just find it difficult to understand that if there was someone out there, in the great ~~small~~ ^{brut} world of those developers, who is disgruntled, I would have had in my contemplation Don Smith, rather than Horizon, or Y and R.

Mr. Gathercole: By reason of these telephone calls, or by reason of Don Smith's mercurial nature?

Mr. Renwick: No, no, ^{By} reason of the telephone calls, by reason of the fact that in the ~~the~~ world of political reality there was some buzzing around the outside. I would have assumed that a person having lived as long as you have in the area of politics would have at least still had the possibility of Don Smith as the disgruntled person. I can only say that this would be my impression. I am really not asking you to comment on it.

Mr. Gathercole: If I might, Mr Renwick, since you have raised it.

Mr. Renwick: Yes.

Mr. Gathercole: Had you received the telephone calls I think your reaction would have been the same as mine has, and I would ~~say~~ say this to you, that Ellis-Don would have been the last company among those developers, or a number of others, who ~~in~~ in my judgment, my personal opinion only, had the right to complain.

Mr. Bullbrook: They ~~would~~ ^{were} been well treated.

Mr. Gathercole: Well, in the first place, he acknowledged that he hadn't had any experience in the development business,

Mr. Bullbrook: Oh, I'm sorry.

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Mr. Gathercole: He hadn't had any previous experience, but in addition to that, my goodness, he had a big programme, hospitals, university buildings, and everything, so I would have thought he would be the last person to complain. I'm sorry, but that is the way I feel.

Mr. Chairman: Mr. Gathercole, I think at one time you indicated that you thought it was someone else. Oh, I am sorry, I thought you were through.

~~Mr. Renwick: Do you mean that really Mr. Smith was not~~

(H-2487 follows)

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PLC

(Mr. Chairman)

~~someone else. Oh, I'm sorry. I thought you were~~

Mr. Renwick: Just a moment. Do you mean that really Mr. Smith was not -- Mr. Smith then is perfectly right that for practical purposes he was not seriously considered because he didn't have this mythology of developer around him.

Mr. Gathercole ~~Mr. Renwick~~: I didn't say that that he wasn't seriously considered. I said he among the other developers had no experience. This was a mark against his company, a disadvantage, that he ~~was~~ had had no experience in these large developments. That is all I was saying.

Mr. Renwick: I see. I guess he didn't have any in-house capabilities.

Mr. Chairman: I just wanted to follow up your remarks, if you thought there was someone else that was making the complaints, someone who had not made ~~his~~ tender. On what basis did you think someone else might have grounds for complaint? Why would you think that they may have.

~~Mr. Gathercole~~
~~Mr. Renwick~~: ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

Mr. Gathercole: Someone who I thought was a friend of ~~Roger~~ Seguin, that was all.

Mr. Chairman: Yes. All right.

Mr. Gathercole: I am sorry, I would rather not mention the name. He happens to be a golfing friend of mine, too.

~~xxxx~~ Mr. Deans: You play a lot of golf.

Mr. Gathercole: Once in a while.

~~Mr. Genseh~~: *Not much this summer.*

Mr. R. G. Hodgson: Could I ask a question, Mr. Chairman?

Mr. Chairman: Yes, Mr. Hodgson.

Mr. Gathercole: Maybe I'll get lots more opportunity.

Mr. R. G. Hodgson: Mr. Gathercole, there were the questions of the Leader of the Opposition. You had a part in preparing the answers, had a responsibility in that area. Whether or not you had heard the rumours of press investigation, you had had a call from the press. Obviously you knew that someone was stirring a fuss, and it would seem to me that you would do great

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speculation as to who that would be. You have ~~said~~ said now that you had thought of someone and you had had these calls regarding Mr. Smith. You hadn't identified the person Mr. Seguin was talking about, but it seems to me that you would have done quite a bit of inquiring as to who the possibility of the one stirring up would have been, and the reason for the questions ^{of} ~~the~~ the Leader of the Opposition, and I just ~~do~~

Mr. Genest: Well, is there any evidence that they were stirred up by Mr. Smith?

Mr. R. G. Hodgson: No.

Mr. Genest: I don't think there is any evidence of it.

Mr. R. G. Hodgson: I think the situation ~~was~~

^{Mr. S. B. Shibley} Mr. Genest: ^{Oh, yes, there is.} Is there evidence that the Leader of the Opposition's questions ~~was~~ ~~is~~ ?

Mr. Shibley: Oh no, there is Mr. Fleck's evidence, however, that ~~xxxxxxxxxxxx~~ *she intended*

Mr. R. G. Hodgson: ~~That~~ That he intended to come to *talk* Mr. Gathercole about this very ~~was~~

Mr. Shibley: On November 7. No, no ~~was~~

Mr. Genest: All I am saying Mr. Shibley is is there any evidence that Mr. Nixon's questions were provoked by Mr. Smith? I didn't think there was any connection between those ~~was~~

Mr. R. G. Hodgson: I don't ~~was~~ think we have any connection yet as to where those ~~xxxxx~~ questions come from. I don't think there is any evidence yet.

Mr. Shibley: I think all that Mr. Hodgson is doing is collecting all the circumstances, including the questions that were tabled, the fact that Mr. Fleck had asked for a narrative, the fact that Seguin had raised this at the Commission meeting on September 1, 1972, the fact that a decision was taken on October 2 to do a rationale. This is within Hydro. I am just collecting the facts for you Mr. Gathercole.

^{R. G. Hodgson} Mr. ~~xxxxxxxxxx~~: Thanks very much. I would have thought that you would have really tried to find out who was stirring the

fuss up.

Mr. R. G. Hodgson: Well, that's a little hard for me to understand, but perhaps I can understand your ~~surprise~~ shock if you had never considered Mr. Smith and suddenly find out way back in 1973.

Mr. R. G. Hodgson: The person that you hadn't really considered is the one ~~that~~ who is stirring up the fuss.

~~to transmit and to disclose the letter on the sender, the author~~
~~of the letter~~

Tape H 2488 follows

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fvk

(Mr. Gathercole)

~~... was not to be disclosed~~ he didn't want to disclose the letter, nor the sender, the author of the letter, and I think, in retrospect this was a mistake because we could have done something about it. Nevertheless, that is a fact.

Mr. R.G. Hodgson: Mr. Dillon has said that he never discussed Mr. Smith being a friend with you until you confronted him. You said: "Your friend Smith is stirring up quite a fuss," sort of thing. So you obviously got the connection of Smith-Dillon friendship through ~~that letter~~ Mr. Seguin.

Mr. Gathercole: Mr. Seguin had explained that he had a conversation with Dick Dillon in this connection and he *had* suggested that it be put in writing or something to that effect. So I knew it ~~was~~ *was* that and Dick Dillon comes from London as well, and Don Smith's in London so I presumed they were ~~in~~ *in* I didn't mean it *in* any derogatory way. I was just uttering the view that Don Smith had certainly started something.

Mr. Genest: I think we should clear up, Mr. Chairman, the time of that- that sort of came in as an aside - we should clear up Mr. Gathercole's recollection as to the time ^{when} ~~that~~ conversation occurred with Mr. Dillon.

Deans:

Mr. ~~xxxxxx~~xxxxxx I think we accepted Mr. Dillon's evidence.

Genest:

Mr. ~~xxxxxx~~xxxxxx: I don't know whether Mr. Hodgson does or not. I thought we'd settled that yesterday.

Mr. R.G. Hodgson: I think Mr. Gathercole should give the reasons why he is definite in the date and what brings it to mind that it is a definite time. He's done part of it. If he has more I'd like to hear it.

Mr. Gathercole: I thought I made it very clear that I wasn't ~~was~~ aware, from any source, that Don Smith was the author of the letter which Roger Seguin received which, I think, was ~~was~~ on August 23, until Roger Seguin disclosed it to the various commissioners early in May. It was early in May 1973, and that was the first I'd ever heard about it and I couldn't believe it.

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Mr. R.G. Hodgson: Was this at the commission meeting or a luncheon associated with the ~~meeting~~ commission meeting, Mr. Gathercole, that you talked with Mr. Dillon?

Mr. Gathercole: I think when he brought it up later on it was at a commission meeting but it just so happened —

Mr. Genest: Perhaps I can ^{refer to} ~~refer to~~ this. I was present with Mr. Gathercole, I hate to give evidence, but perhaps I can recall to Mr. Gathercole that there was a meeting after Mr. Gathercole had given evidence that he thought Mr. Seguin was the person who had mentioned the friendship between the Premier. If the members will recall, ^{that} it's so long ago now. Mr. Seguin had heard of that, of course, and said that he had never known about it and talked to Mr. Gathercole in that evening. I was in Mr. Gathercole's office and I believe Mr. Seguin pulled out the letter then. Later it was discussed with the commissioners because we had undertaken to give some information to the committee from the commissioners as to whether any of them had heard, or had said, anything about a friendship between Moog and Davis. I don't know if the members recall that, but that's the sequence of events as I recall it.

Mr. R.G. Hodgson: Mr. Genest, may I thank you for mentioning that you were present because my real concern was that it seemed to me that a whole host of ~~very~~ high-pressured people had talked to Mr. Dillon and that really concerned me about his testimony yesterday.

Mr. Genest: I tell you, that's why I sent Mr. McCallum out to see ~~Mr.~~ — I'm just giving information to the committee — I don't like to pressure witnesses, or to say, but I was there, Mr. McCallum was there. We'd seen the surprise on Mr. Gathercole's face when he saw that letter and I just personally couldn't believe that Mr. Dillon wasn't mistaken when he gave that evidence. That's why I sent Mr. McCallum out ^(— that's —) to my recollection.

Mr. R.G. Hodgson: He didn't raise his eyebrow or anything like that?

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Mr. Genest: No, Mr. Gathercole seemed quite surprised.

Mr. Chairman: Mr. Genest, how ^{do} you tell surprise from shock, or something else?

Mr. R.G. Hodgson: I was concerned about this because, on the surface you know, there seemed to be story that wasn't being told and, to me, it had to be defined by Mr. Gathercole as to the series of events and I'm quite prepared to accept it. It just seemed to me to be unfair because if it wasn't thoroughly out here it would leave a suspicion in my mind that I didn't want to accept and, quite frankly, Mr. Gathercole when I said I would like to ask you about this last night,

(Tape H-2489 follows)

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D.L.

H 2489-1

(Mr. G. R. Hodgson)

~~and that I didn't want to accept and quite frankly,~~
~~Mr. Gathercole, when I said I would like to talk to you about~~
~~this last night~~ I didn't want to interrupt your trip to
Sudbury but I felt it was pretty necessary for Mr. Dillon's
~~testimony~~ testimony and for your own to have this matter
clarified.

Mr. Gathercole: Well thank you, Mr. Hodgson, because
I do appreciate the opportunity to make it very emphatic that
I had ~~no~~ ^{no} knowledge of the author of that letter to Roger
Seguin until early in May, 1973. That's very, very definite.

Mr. Genest: No, middle May.

Mr. Renwick: Mr. Chairman, I hate to keep dwelling
on something when Mr. Gathercole is so definite. I have in
front of me the copy of the letter of Mr. Smith to Mr. Seguin
of August ~~the~~ 21st which is exhibit 169. Now there is nothing
unclear about Mr. Smith's communication to Mr. Seguin that
he was one of the developers who made a proposal and lost.
It wasn't some person outside the group who felt disgruntled
because he didn't have an opportunity. It's perfectly clear
that Ellis-Don was one of the proposed developers who made
the proposal. ^{The} letter so states unequivocally and a copy
of the proposal accompanies it to Roger Seguin. Now Roger
Seguin met with the Commissioners privately, according to the
evidence. Did it not come clear from what ^{ever} Mr. Seguin
conveyed to you and the other Commissioners that the person
that he was talking about as having complained was one of the
unsuccessful developers?

Mr. Gathercole: No it did not, not to me. Sorry, but
it didn't.

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D.L.

Mr. Renwick: You say it was in May of this year.
When the Globe and Mail article of April the 30th appear, didn't that trigger your mind to the fact as to which of the developers it was? ~~That I could have seen~~ Once the Globe and Mail stories of April ~~the~~ 28th and April ~~the~~ 30th were published there could be no question that the disgruntled person was one of three. Now was it only in May? I agree that April ~~the~~ 30th to early May is not long, but April 30th was a very sort of crucial day in ~~the development of~~ Ontario Hydro's affairs.

Mr. Gathercole: Well, even after the publication of the article in the Globe and Mail, ⁱⁿ which Don Smith is quoted, I still didn't ^{link} Don Smith ^{as} ~~was~~ the author of the letter to Roger Seguin.

Mr. Renwick: And Roger Seguin at no point indicated that Mr. Smith had gotten in touch with him because of Mr. Dillon, ^{at} the suggestion, not because of, but at the suggestion of Mr. Dillon?

Mr. Gathercole: Not until after. Not until after the letter was ⁱⁿ May that the source was disclosed.

Mr. Renwick: And the executive director of Task Force Hydro, Mr. Dillon, did not mention to you or to anyone that Don Smith had spoken with him about it and that he, Mr. Dillon, had advised him to write to Roger Seguin?

Mr. Gathercole: He did not.

Mr. Renwick: I'm not ^{referring} ~~referring~~ to Mr. Gathercole, but it's just been, I think, magnificent running through the whole of this inquiry about what people choose to know and what they choose not to know. I think it's ^{made} it extremely difficult,

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D.L.

~~(...)~~
~~to~~
Mr. Genest: Oh, I don't know if that's a fair comment.

Mr. Renwick: I'm not refer^{ing} to Mr. Gathercole and I make it as a very general comment. It's the non-stating of what in so many instances are obvious things to have been said that has protracted the inquiry. @

~~can't conceive of a person having received as a~~

~~Commissioner of Inquiry had received~~

(Tape 2490 to follow)

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DT

(Mr. Renwick)

I can't conceive of a person having received, as a commissioner of Hydro, having received a letter like that, having a private meeting of the commission at which I understand no record was kept of any kind, and that in conveying it to the commissioners, not even the indication got across at all that the person complaining was one of the unsuccessful developers. I frankly ~~do~~ don't understand it. Just don't understand —

Mr. Genest: Mr. Renwick, in fairness though, you will recall Mr. Seguin's testimony, and ~~that~~ he was very clear on that, that the — and he was very clear on that — that he did not — that if Mr. Smith ^{had} that's what he told Mr. Dillon; ~~that~~ that's his evidence — Mr. Smith had a complaint to make, he should make it to the secretary of the commission, that he did not wish to speak to him and Mr. Dillon said, "Well, can he write you?" He said, "Well, I can't stop him writing me but if he has got a complaint, he's got to take it up with the commission directly."

That was Mr. Seguin's attitude to the matter.

Mr. Renwick: But the course of events altered Mr. Seguin's response from that stated position, because when he got the letter he went to the commissioners privately and he discussed the letter with them and yet even the fundamentals of the communication didn't appear to take place.

Mr. Gathercole: No, he said he did not present them and that is true. His advice to us was, as I recall, "Be sure of your facts." Now, one other additional addendum to ~~what~~ —

Mr. Deans: Whose advice to who was, "Be sure of your facts?"

Mr. Gathercole: That was his suggestion to us. To me, as I recall it and I was going to add that one other explanation that Roger has given, Roger Seguin, has given, to why he ~~didn't~~ didn't disclose the contents of this letter was it was marked "personal and confidential" and he ~~said~~ says, "I respected the confidentiality of it and therefore I ~~didn't~~ wouldn't release the news." Now, that was his explanation and that's his way of doing it. I would have probably dealt with it in a different way.

Mr. Renwick: I can understand Mr. Seguin receiving this

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(Mr. Renwick)

letter, unwillingly altering his course of response from what he had stated his response was going to be, taking it up with a private meeting of the commission, which I think is unusual in the first place, but not even getting the communication across to his fellow commissioners that it was one of the disgruntled developers who had made a proposal and had lost that was at the back of it, that it was somebody out there in the wild blue yonder would not have seemed to me to have been a reason why a commissioner would want to have a private meeting with his fellow commissioners. I just don't understand it, ~~because~~ because following that, of course, Hydro, as I have just had pointed out to me, in exhibit 91, Hydro did in fact take some very specific action, because Mr. Gordon refers to "following Roger Seguin's comment, ~~that~~ ^{at} a recent commission meeting. I suggested to Henry Sissons that we should prepare a brief, effective statement on the rationale for Ontario Hydro's actions with respect to the construction of its new office building. The idea was that we should only use this if the new building became an issue in the newspapers, ^{and} I have gone on it for too great length ~~xx~~ but I think that a developer who had not been asked to submit a proposal would be on ~~extremely~~ extremely weak ground to have caused any serious press comment.

I don't think for one single moment that if the four developers' proposals which had come in had been evaluated and assessed, and so on, that there would have been criticism because the net wasn't thrown wider. ~~xx~~ There might have been marginal criticism but not the kind of criticism that would lead to this amount of careful response by Hydro.

Mr. Chairman: Thank you, Mr. Renwick: Mr. Hodgson.

Mr. R. G. Hodgson: Mr. Chairman, I would like to ask

Mr. Gathercole a question with regard to Mr. McCallum who you had hired ~~and was advising the commission~~

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M.R.

(Mr. R.G. Hodgson)

A question with regard to Mr. McCallum, whom you had hired, was advising the commission or advising you about the terms of the contract, especially in relation to tidying up or tightening up the section with regard to establishing cost or value, having Mr. McCallum make a recommendation to you or the commission, and having this background of knowledge with Mr. Seguin. Was he present at the commission meeting? With Mr. McCallum?

Mr. Gathercole: Mr. Seguin was absent during a couple of the commission meetings at which the building ~~was~~ and the agreement ~~was discussed or~~ were discussed.

Mr. R.G. Hodgson: It seems to me that he would have *closely* ~~presently~~ questioned.

Mr. Gathercole: He was there for one or two of the meetings at that time. All I'm saying is that he wasn't at all the meetings at which this building ~~was~~

Mr. R.G. Hodgson: He wasn't present - was he present when Mr. McCallum was recommending this to the commission?

Mr. Genest: I don't believe so, Mr. Hodgson. I think Mr. Seguin was not present at the October 26th or 25th, ^{meeting} I forget ~~which~~ which date, I think the evidence is in on that. I think he was present at the November 1st meeting, where the discussion was mainly about the dispute over the sharing in revenue on the commercial space.

Mr. R.G. Hodgson: It just seemed to me that with that background and he being a lawyer he would have really asked some very searching questions, regarding Mr. McCallum's advice. It seems too bad that he wasn't there.

Mr. Chairman: Mr. Hodgson, I think Mr. Shibley has a few more topics.

Mr. Shibley: Mr. Gathercole, in response to one of Mr. Rånwick's questions you said that it was regrettable that you didn't know that it was Don Smith who was complaining because

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(Mr. Shibley)

then you could have done something about it. What did you mean by that answer?

Mr. Gathercole: What I mean by that is that we might have gone in with and discussed the matter with Don Smith more fully. We might have looked into the procedures that had been employed more extensively and to have avoided some of the things ~~that~~ objections to which Don Smith has taken.

Mr. Shibley: All right. Now, then, again, relating this line of questioning in part at least to the fact that you say that you did not know that it was Smith who was complaining until May of 1973

Mr. Gathercole: Yes.

Mr. Shibley: I'm not just talking about ^{through} Seguin's letter. I take it your evidence is you didn't know it was Smith from any source or in any manner until May of 1973.

Mr. Gathercole: Absolutely.

Mr. Shibley: All right. You were, when I say you - Hydro was asked to prepare the answers to the questions that Mr. Nixon had tabled in the House?

Mr. Gathercole: Yes.

Mr. Shibley: And it was you who remitted the answers

Mr. Gathercole: Yes.

Mr. Shibley: dated December 13, 1972 to the Premier.

Mr. Gathercole: Yes.

Mr. Shibley: Is that correct?

So that, insofar as the ultimate responsibility, and I know that there were a number of people provided information, the ultimate responsibility for the content of those replies ~~was~~ was yours?

Mr. Gathercole: Yes.

Mr. Shibley: Now, of course, you would approach a request for answers to questions of the Legislature with great care, would you not?

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Mr. Gathercole: We would try to be factual.

Mr. Shibley: Yes. It's extremely important that the information provided to the Legislature in this manner be factual, complete and accurate. Is that so?

Mr. Gathercole: Yes.

Mr. Shibley: And not be set out in a manner that in any way distorts what actually transpired. You were aware of that?

Mr. Gathercole: Yes.

Mr. Shibley: And having regard for your responsibility in the manner and the fact that you were communicating these answers to the Premier for use by him, in terms of the Legislature receiving the information through him, from you, did you carefully consider the content of the answers that you provided?

~~Mr. Gathercole: I didn't go into the details of~~

~~the~~

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AA

~~(Mr. Gathercole)~~
Mr. Gathercole: I didn't go into the details of the composition of the answers. These answers were prepared by others. I assume the responsibility for the accuracy of the answers. I accept that. I did not prepare the material, nor did I make an exhaustive detailed analysis of the document.

Mr. Shibley: I take you immediately to page five, the top of the page, where it says, and you are talking about all proposals, "All were carefully analyzed and discussed with each developer individually and a decision to proceed to enter into an agreement with Canada Square." It's the first part of that. "All were carefully analyzed and discussed with each developer individually." I want to remind you now, MR. Gathercole, that since you gave your testimony, Horizon and Y and R have both testified that there was no follow-up with them in respect of their proposals. There was no opportunity to them to know that Hydro had in mind that it wanted a \$34 per square foot building. There was no discussion with Horizon ~~and~~ ^{to the} respecting whether it wouldn't vary its proposal as ^{to the} base year for maintenance cost. There was literally no follow-up and I am concerned and there is also a great deal of evidence as to the form of the analyses that took place, by way of a comparison of the proposals. For example, with almost indecent haste, on February 1, a week after the 24th of January, which was the deadline, so to speak, Mr. Candy was indicating preference at least, or recommending a selection of Canada Square. Having regard for the whole evidence, and I am not going to get into it all with you, in terms of the kind of analysis that was actually effected and the lack of discussion with the developers, do you consider that a fulfillment of the obligation that was upon you to provide accurate, complete and undistorted

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(Mr. Shibley)

information to the Legislature of this province?

Mr. Genest: NOW, Mr. Shibley, I don't think that's a ~~fair~~ fair question. I think it should be established what the witness's knowledge of those matters was when the question was answered because you are throwing ⁱⁿ all the evidence that has occurred since this hearing has begun.

Mr. Shibley: Well, Mr. Chairman, I thought I was very careful in laying the groundwork for the question by establishing that this witness, when he submitted these, or remitted these answers, was quite alert to the importance of the matter, to the need for accuracy and completeness and the responsibility that he was assuming ~~in~~ in that respect.

Mr. Genest: You are suggesting he should have conducted a three-month enquiry.

Mr. Bullbrook: Now, I want to say something in connection with the point raised by Mr. Genest because I did, as you are well aware, undertake this type of examination before, because I consider it extremely important to us, if not with respect to our report, certainly with respect to the obligations in the future as far as giving ministers information in response questions. ~~and~~ I think that Mr. Shibley is doing a superior job to the job ~~that~~ that I did, because as I understand his questioning, he has now led, or at least Mr. Gathercole has taken the position that he accepts responsibility for this, and so the question ^{is the question} of the responsibility of Hydro, itself, and I understand these to be the questions that are being put forward.

I know yesterday, for example, Mr. Genest said that the Commission could be regarded as a company and the Commission itself has a board of directors, and I carried ~~on~~ on, perhaps, not in the appropriate manner, in my questioning, ~~but~~ although I WAS QUITE happy to do so. I want to say that Mr. Genest, I regard the ~~questioning~~ questioning now as

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(Mr. Bullbrook)

quite appropriate. We are asking the man who has assumed ultimate responsibility for these answers.

Mr. Chairman: I think it is reasonable, Mr. Genest.

Mr. Genest: No, but I don't think I made my point clear, Mr. Chairman. I get the drift of the question. It's the way it has been put because it is not clear, in my submission, whether MR. Shibley ~~is asking whether at the time that he gave these~~



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C.B.

(Mr. Genest)

~~because it is not clear in my submission whether Mr. Shibley~~
is asking, whether at the time that he gave those answers, accepted responsibility for them, Mr. Gathercole believed them to be true. Or whether he is asked now to pass a judgement on whether in the light of all the evidence that you've heard to date there is something wrong with those answers. They are two different questions in my respectful submissions.

A member: Quite right.

Mr. Shibley: Mr. Chairman if I may just go back a bit. Mr. Gathercole as ~~late~~ early as October ~~2nd~~ 2nd there was a meeting at which it was decided that a rationale should be prepared respecting the mode of letting of this contract. Is that so?

Mr. Gathercole: I call it an explanation.

Mr. Shibley: Yes, all right, an explanation. Again on August 25th when the press release was prepared, arrangements were made for answers to possible questioning that might arise. Is that so?

Mr. Gathercole: I believe so.

Mr. Shibley: And on November 9th it appears that MR. Fleck asked for a narrative to be prepared by - asked you to have a narrative prepared as to the manner in which Hydro had handled this transaction.

Mr. Genest: ^{Is the} this is one ~~to~~ which we have in dispute?

Mr. Shibley: Well let's not talk about dispute we have.

Mr. Genest: Well let's not assume that it's a fact, if there is a dispute about it.

Mr. Shibley: All right, in any event.

~~MacBeth~~
Mr. Genest: Let's ignore that.

Mr. Shibley: Let's ignore it. In fact a narrative of November 15 was prepared by Hydro setting out in great detail, an analysis of the mode of letting of this contract. Is that not so?

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C.B.

Mr. Gathercole: Yes.

Mr. Shibley: And you remitted that not only to the Premier but ~~was~~ it was remitted to a number of Cabinet ministers. Is that not so?

Mr. Gathercole: Yes.

Mr. Shibley: So that you had had the opportunity and certainly had had the catalyst to better inform yourself in respect to the matters which are the subject of these questions than might otherwise ~~be~~ be the case. Is that not so?

Mr. Gathercole: Yes but I obviously was relying upon the information I had ~~present~~ at that time. I didn't go behind the preparation of the material to say, is this factual or isn't it; or is it in the somewhat more gloss form than it might be.

Mr. Shibley: Mr. Gathercole, what is disturbing about this representation to the Legislature, through you, is that your having had all these efforts made to prepare to answer for the mode of selecting Canada Square. Your being alert to the circumstance that your mode of selection was under examination so to speak and having regard for what we know ~~had~~ had taken place, what this committee knows had taken place within Hydro, did you —

Mr. Gathercole: I didn't know that at that time.

Mr. Shibley: I see. Are you saying then that — well would you agree with me as to this: That reading this at face value, you would take it ~~at~~ ^{that} a full and even competition had been effected as among the four developers who made submissions. Would you read it that way?

Mr. Gathercole: I would say that there had been proposals fully discussed and analysed.

Mr. Shibley: NO you are not answering the question.

I put it to you that anyone reading this statement in the House or hearing it read in the House would take it that a full and equal competition, equal opportunity had been afforded to all four developers who made a submission. Isn't that so?

Mr. Gathercole: We had studied, as I've mentioned before, the Canada Square OISE building proposal and whether that would qualify for providing them with some net advantage because of being in earlier I'm not in a position to say.

Mr. Shibley: Mr. GATHERcole you are not being responsive. I'm sorry to interrupt you. I only want your answer as to whether anyone reading that statement would take it as representing that an equal opportunity had been afforded to all four developers that a true competition had been effected as among those making submissions.

Mr. Gathercole: I would say a true competition yes/

Mr. Chairman: Gentlemen we have been an hour and a half without a break.

Mr. Deans: Could I ask one question?

Mr. Genest: Just before we break, ^(I would remind) the members of the committee, I'm sure they are all interested in exercising ^{just} Mr. Gathercole on this subject, and I ~~just~~ want to remind you that you've been through ^{the} whole drill once.

Mr. Deans: Well I'm sorry but I...

Mr. Bullbrook: Don't characterize it as that.

Mr. Chairman: Gentlemen just a moment I want to find out if Mr. GATHERcole is still heading for Sudbury this afternoon.

Mr. Genest: No, no he's at your disposal Mr. Chairman.

Mr. Chairman: All right. Then I would like to take a break, Mr. Deans, Mr. Bullbrook and...

Mr. Bullbrook: Well I don't necessarily want to ask the witness any questions at all. I just want to make it amply ~~xxxx~~ clear that I don't want the record...

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JLP

(Mr. Chairman)

~~like to take a break if Mr. Deans and Mr. Bullbrook~~

Mr. Bullbrook: I don't necessarily want to ask the witness any questions at all. I just want to make it amply clear that I don't want the record to lie with Mr. Genest's comment that we're interested in exercising him over this subject.

Mr. Genest: I'll withdraw and apologize ~~for~~ for it, Mr. Bullbrook.

MR. Chairman: I got used to allowing Mr. Genest a fair width of expression without getting exercised myself. We're adjourned then for 10 minutes, Mr. Deans, then we'll be back.

(Tape H-2495 follows)

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12:05 - 12:10 pm
JLP

The Committee resumed at 12:05 o'clock p.m.

Mr. Chairman: Do you wish to proceed, ^{Mr. Shibley} or Mr. Deans?

Mr. Deans: I want to ask a question, Mr. Gathercole, that flows directly from the questioning of the counsel in regard to what you knew, actually knew, from your own knowledge, to be factual with regard to the answer you gave, or the answers you provided to the questions that were asked in the Legislature.

It bothers me that you would say that you accepted those answers to be true at that point, or that you simply asked your staff, as I'm sure you did, ~~asked your staff~~ to give the rationale, and you accepted that as the rationale and you handed that over to the government.

I want to say to Mr. Shibley, I don't for one moment always expect that we'll get the whole truth to every question that we ask in the Legislature. I know we get the truth, but it isn't necessarily absolutely full. And the government's position is to put forward the best possible face to avoid the criticism, if it can. But we should get the truth, ^{mark you} but I know that this isn't ~~.....~~.

Mr. Chairman: In 99 per cent of the cases, I think you get the full truth.

Mr. Deans: Now, what is bothering me though is an entirely different ~~.....~~

Mr. R.G. Hodgson: Of course, you don't always get the story that you ~~want to~~ ^{like to} get.

Mr. Deans: No, that's true, that's why I'm not always sure I'm getting the truth. What I want to say to you - that has nothing to do with this hearing by the way, ~~but~~ I'm just talking about other days and other places. What bothers me about what you've said is this. As I read the questions, I would have thought that those would have been the questions that you, as the Chairman of Hydro, would have asked, with the exception of the political questions, back in January and February and March, at the time that

(Mr. Deans)

you were leading up to selecting or going through the process of selecting Canada Square. And I would have thought that you at that time would have done the digging necessary to be sure in your own mind that the material provided to you for the purpose of making the final selection was absolutely accurate. And I would have thought, looking back into it, that as the Commission, the Commission would have wanted to be absolutely sure that every single, that every opportunity had been given to each of the people selected to make proposals, to ensure that they had received the kind of fair chance in the contest. And the very fact that when the questions were passed on to you by the ministry for answer, and you then answered them, only to find out as the hearing progressed - and I say this, you may dispute this - but only from my point of view, to find out as the hearing progressed, that it really wasn't quite the way it appeared to be on the surface. It makes me wonder if the Commission really gave the matter very much thought at all, if they really did, in fact, charge their employees with the responsibilities of providing them with the background material necessary to make a sensible decision based on factual evidence.

~~Now, I've said a lot and I say it to you, and you~~

~~now~~
(Tape H-2496 follows)

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12:10 - 12:15 p.m.
B.G.

(Mr. Deans)

~~decision based on~~ Now, I've said a lot, and I say it to you, I ask you now, do you really think back at the time you were asked to make the decision, that as the Chairman of Hydro and as a member of the Commission, that you and the Commission satisfied yourselves adequately that the proposals put forward had been given the kind of in-depth analysis necessary to come up with the conclusion that Canada Square's was the proper one?

Mr. Gathercole: It was my conclusion at the time that I submitted this document, that this represented the facts of the case, that there had been a study made, the proposals had been analyzed, they had been given fair consideration during that period. Now, I did know, and that's the reason ^{that} I have been hesitant ^{on one of the} I did know that Canada Square's OISE Building had been studied from the standpoint of being sort of a model to gain some experience about it. But, on the best of my information, we were giving an ~~equal~~ opportunity an equal opportunity, to the various developers, and ~~that~~ their proposals were being considered in a fair way.

Now, we weren't going to ask them to prepare ~~greatly~~ greatly extensive plans. ^{We} had gone through that procedure, taken a year and a half to have specifications prepared, we had spent a million and a half dollars on it, only to find that those plans had been ^{made} obsoleted because of the passage of time, and whether it was the developers' money or our money that was being spent, we felt we didn't want to go through the throes of that experience again. And that is why the period for the receipt of proposals was recognized as being relatively brief. Now, it could have been longer, it should have been longer, I acknowledge, and I take my share of the responsibility for it, without qualification, that it should have been longer, and we obviously should have gone back to people and asked them additional questions. We should have gone back to them and ^{informed} them, and I recognize that.

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(Mr. Gathercole)

On the other hand, I think that in light of the fact that we had been frustrated for four and a half years in getting the building erected, that inflation was making the cost of the building increasingly more expensive to our customers, the power users of the province, we wanted to get ahead. We thought the timing was right, we ^{were} sort of in an area of indecision, and found that we should get ahead; we made a decision, and I think it's a fortuitous decision in some respects, and at the same time it was a wise decision based upon our analysis of some of the economic conditions which lay ahead. And that's why I say that I think, yes, we are at fault in many respects, and I fully acknowledge that, and I think that we did put a great deal of responsibility on Mr. Candy, but how do you fault a person who has been erecting, architecturing, buildings for Hydro for a long period of time, and never had a mistake.

Mr. Deans: I don't want to -

Mr. Gathercole: Well, I just wanted to ^{give} ~~get~~ some information.

Mr. Deans: I understand and I don't want you to consider ~~for one~~ ^{haven't had}

Mr. Gathercole: ~~and~~ you invited me and I ~~wasn't~~

an opportunity of presenting a side of it which hasn't been revealed.

Mr. Deans: Well, I think whether revealed or otherwise, I understood that side of it. That's come through very clearly from the evidence, that Hydro were extremely eager to proceed, and that they didn't want any further delays, they didn't want to run the risk of government interference at some point, and perhaps not being able to proceed, and ~~that they~~. I don't doubt for one moment that your interest is in trying to provide the cheapest possible power to the Province of Ontario, I'm not quarrelling with that; neither am I quarrelling with putting responsibility on Ken Candy for ~~looking~~ analyzing the proposals.

What I'm saying is that in fact the proposals, as it ~~do~~ turns out, the final decision had to be that of the Commission. And the questions that were asked in the Legislature, excluding the political questions, were questions which should have been

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B.G.

(Mr. Deans)

asked by the Commission of their employees, in the determination of whether or not the recommendation was the right one. And those questions obviously weren't asked. If they had been asked, then much of what came out ^{at} of this hearing as a result of our enquiries into what went on within Hydro, would have become knowledge to the Commission.

~~Mr. Gethers: They weren't asked until later, until later in the game. I think.~~

(Tape H-2497 follows)

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M.R.

~~(The Deans)~~

~~new knowledge in the commission~~

Mr. Gathercole: They weren't asked until later in the game. I think Roger Seguin mentioned that he had asked, "Are your facts right that this is the best deal that you can get?" *We were asked that.*

Mr. Deans: But wasn't that the key question? That is this the best deal we can get?

Mr. Gathercole: That was a key question, yes.

Mr. Deans: And yet there was no effort made by the commission to instruct the employees of Hydro to investigate any further beyond the rather cursory investigation that they had made of the preliminary proposals of the four developers?

Mr. Gathercole: Well, I must admit that I had thought that the analysis of the proposals, which has been revealed by this inquiry, was more extensive than it had been and that the developers had been given more time.

Now, I did know that we were not going to go in for extensive detail and elaborate proposals but rather to get general proposals which we could consider and then evaluate in a general way and then, having selected one developer, that we would get down to negotiating with him. And this is the name of the game in the development field.

There isn't any question about. It's what nearly everyone has done. One of the other alternatives would be to do what the Canadian Imperial Bank of Commerce has done and that is to engage an engineering firm, Kiewit, who will undertake to do this very process, and maybe we should have done this. But it would have cost the commission another three or four per cent which would perhaps be of the order of two and a half ^{million} - three million - two million dollars *or so*.

Mr. Chairman: Mr. Deans, I think Mr. Shibley has some questions to ask in this field and then Mr. Newman. Maybe we can come back to you if Mr. Shibley doesn't mind.

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Mr. Shibley: Mr. Gathercole, I'd like to take your mind back to the meeting of the commission, the meetings in the latter part of October, 1972, and in November ~~perhaps~~ perhaps of that year also. I don't know whether you were here, but Mr. Candy gave very clear evidence and Mr. McCallum gave equally clear evidence that when the chips were down they considered that a key term of this agreement, namely the provision as to the costing of the building - and a great deal of emphasis has been put on this - that Hydro was going to get a building of value, a \$34 per square foot building, that when the chips were down that they considered that Mr. Moog had reneged on his agreement with Mr. Candy that the costing would be based upon cost of construction, finance costs and design fees.

And further, that it was a major concern that a provision which Mr. Houser had included in his draft of the agreement which required Canada Square to produce its evidence of cost was not being agreed upon by Canada Square; that these two vital circumstances were tabled at meetings of the commission, two of them, and instructions asked for at those meetings, from the commissioners. Now this was a vital term, these were two very vital terms under the agreement, to ensure you were going to get value for your money, to ensure that ~~you~~ ~~were~~ the developer was not getting an inordinate profit on the building, to ensure that your right to abatement of rent was realized if the circumstances permitted, to ensure that he couldn't mortgage the building beyond the limits of what went into it. This was probably the key term of the agreement. And it was the first occasion really that I recognized in the evidence when responsibility was finally being shifted from Mr. Candy to the commission to make a vital decision in that respect. And the commission, I put to you, took the way out of permitting the agreement to go forward in the form it took; adopting terminology, ~~an~~ namely, ~~an~~ "appraised value" which has been the cause of so much

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V.H.

(Mr. Shibley)

~~namely appraised value which has been the cause of so much~~
difficulty before this committee and, it is anticipated, maybe
the cause of difficulties with Canada Square. Now having
regard for the responsibilities of the Commission in the
circumstances, I would like to ask you first, why didn't
the Commission simply put its foot down and say, "No, Mr.
Moog, we aren't going to enter into this agreement with you
unless and until you give us a term of that contract that
gives us ⁱⁿ clear and unequivocal language the protection that
we expect to have regarding that matter." Why didn't the
Commissioners do that?

Mr. Gathercole: Could we establish first, Mr.
Shibley, that this clause to which you are referring becomes
operative only if the value of the building is less than \$34
per square foot and the emphasis was put on that matter that the
responsibility, the heavy responsibility, rests upon Mr.
Candy to ensure that full value was obtained, namely of
the \$34. Now I just want to make that, because if the
costs rise, then this other clause doesn't become operative.

Mr. Shibley: Mr. Gathercole.

Mr. Gathercole: But I agree ---

Mr. Genest: Let him finish his sentence, please.

Mr. Shibley: I am sorry.

Mr. ^{Chairman} Genest: Let Mr. Gathercole go ahead.

Mr. Gathercole: The question of if ^{was a} and I was
concerned about this too, when we were advised by Mr. Candy
and Mr. McCallum that, hard as they had tried, Canada Square
for reasons which they felt were related to the existence of
certain patents or trade secrets that they weren't going to
reveal their costs, I myself felt this ^{was a} matter of concern.
I said, "For heaven's sakes, how then are we going to make this
clause operative, if it so happens to work out that way, without
knowing their costs?" The response that I obtained at that
time was that this appraised value will equate reconstruction

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(Mr. Gathercole)

costs, reproduction costs, or redevelopment costs, and that is the basis upon which we conceded or agreed to this change. Now, the definition of this has been set out by Mr. McCallum and his explanation, ^{and} I thought it was a very clear explanation, of what we definitely had in mind ~~in~~ in accepting that change.

Mr. Shibley: ^{But} Mr. Gathercole, did Mr. McCallum not also advise you that the ~~phrase~~ ^{phrase} was ~~equivocal~~ ^{equivocal} in its meaning? In fact, in his mind, as expressed in his own memorandum, it was sheer window-dressing.

Mr. Gathercole: No, Mr. Shibley, very definitely not. We have ~~not~~ ever thought for a moment that ~~there~~ ^{that} was window-dressing ~~nor~~ did we interpret it that way and to this day, we don't interpret it thatway.

Mr. Shibley: The difficulty, Mr. Gathercole, ~~was~~ is that you were receiving advice from your counsel that that wording was not sufficiently ^{en} clear ^{and} certainly from the position taken by Canada Square before this committee there is an issue outstanding now as to whether Mr. Candy and Mr. McCallum's interpretation of the phrase is going to meet with acceptance by Canada Square.

Mr. Genest: Mr. Shibley, I think in fairness ~~you~~ you ought to refer to Mr. McCallum's evidence on the point, because Mr. ~~...~~

Mr. Chairman: The word "window dressing" in Mr. McCallum's -- ~~he says~~ ...

Mr. Genest: ^{He says} ~~He~~ did not tell that to the Commission and he doesn't believe it is window-dressing.

Mr. Chairman: In any event, if it he did use it to the Commission ...

Mr. ~~Genest~~ ^{Gathercole}: He did not!

Mr. Chairman: ~~...~~ he said it for emphasis and not...

Mr. Genest: No. He didn't use it. He was very clear on that.

Mr. Chairman: ^{He didn't use that -} I think you are right. That was in his memorandum, but the point was that he wanted to make some

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(Mr. Chairman)

emphasis with the Commission and that is why he put it in his memorandum. But you are quite right, Mr. Genest.

Mr. Genest: The other point I ~~am~~ wish to make, Mr. Chairman, is Mr. McCallum also said in his advice to the commission, the thrust of his advice was that this formula did not represent what they had started out to get, which was costs.

Mr. Shibley: ~~Well~~ Mr. Candy ---

Mr. Genest: I remind Mr. Shibley, with respect, it is unconsciously putting a gloss on that evidence that isn't there.

Mr. Shibley: What I want to know is this, Mr. Gathercole. It is obvious that this mode of computing costs was the subject of intense consideration at that time, in October 1972 - is that correct?

~~Mr. Gathercole:~~ Yes.

~~Mr. Shibley:~~ ~~What I want to know is~~

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~~Mr. Shibley:~~

~~at that time in October of 1972 is that correct?~~

Mr. Gathercole: Yes.

Mr. Shibley: And what I want to know is why the commissioners did not take a firm position in that respect.

Mr. Gathercole: The reason we accepted the appraised value was we interpreted that phrase to mean a redevelopment cost and that it would be synonymous with cost aside from the royalties or legitimate additional revenues that might ~~now~~ accrue to Canada Square by reason of certain patent rights and the question then came up as to whether - as to how we were going to determine these redevelopment costs and one of them was that we would have ~~Hanscomb~~ Hanscomb Roy to make calculations of these costs and also that we would have an architect on the job in order to do that.

Mr. Shibley: Well, Mr. Gathercole, did you not think your bargaining position was sufficiently strong to at least insist upon the production and the inclusion of a provision in the agreement for the production of ~~Canada~~ Canada Square's costs? Didn't you think you could at least insist on that?

Mr. Gathercole: We considered that these cost figures would in the end become available through the cost calculations and estimates that were being made by Hanscomb Roy.

Mr. Shibley: No, you're not answering my question. I am sorry, Mr. Gathercole. I asked you; your counsel had actually incorporated provision for the production of cost figures. You ^{you} say, ~~we're~~ ^{you} interpreting appraised value to mean the cost of construction or reconstruction as you like. It is clear to everyone that the actual costs would be helpful to say the least. Did you not consider your bargaining position with Canada Square at least sufficiently firm that you could say to them - listen, you are going to produce your documentation as to costs, your sub-contracts, your tender calls, etc., or we are not going to make a deal with you? Did you feel that Mr. Moog would back away from the deal in those circumstances?

Mr. Gathercole: We had been negotiating the agreement, or Mr. McCallum and Mr. Candy had been negotiating ~~that~~ the agreement, and certain additional improvements had been made to the agreement.

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(Mr. Gathercole)

Now, we come to the one point of whether we are going to accept an appraised value or whether we are going to stick to the cost one.

Mr. Shibley: Yes.

Mr. Gathercole: It was considered in the discussions that ~~some~~ ensued that we could live with the appraised value concept which would be ~~some~~ proximate to the redevelopment cost, that is during the historical period.

Mr. Shibley: Mr. Gathercole, I am going to take you ^{just} back a bit and ~~tell~~ you what the history of this issue evolves as. Up to July 18th, even Mr. Coles concurs in the fact that Canada Square had agreed that so long as Hydro was willing to go for a fixed price of \$45 million, no questions asked so to speak, that cost would be as interpreted by Mr. Candy.

Mr. Rice: Excuse me, Mr. Shibley. Mr. Coles - it is not a fixed price, it was a fixed rental --

Mr. Shibley: I am sorry, fixed rental - you are right. ^{So} Thank you. ~~As~~ long as Hydro would go for a fixed rental of \$4.92, that's better still - so long as ~~it~~ there was thought to be any abatement of rental that, sure, you could define cost anyway you want - we will agree ~~that~~ that costs should only be costs of construction, design fees and interim financing charges, but the minute there was a suggestion by Mr. Candy that ~~if~~ the cost ~~of~~ of the building was going to be less than \$45 million, the whole debate developed about whether the word "cost" should be so defined or appraised value employed.

Didn't that trigger in your mind the idea that Canada Square expected a spread between its cost of construction, its cost of interim financing and its design fees on the one hand, and \$45 million on the other? ~~Didn't that trigger in your thinking that they intended appraised value to~~

(H-2500 to follow)

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~~Mr. Shibley~~

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(Mr. Gathercole)

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(H-2500 to follow)

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fvk

(Mr. Shibley)

~~... design fees on one hand and \$45 million on the other.~~

Didn't that trigger, in your thinking, that they intended "appraised value" to be a figure greater than those three elements?

Mr. Gathercole: Mr. Shibley and gentlemen, in my mind the arrangement was one of which should not, in any sense— which I said at two or three of the meetings, at which this matter was discussed, ^{should} not give rise to an unreasonable or undue profit and whatever arrangement that we had should be such that it would not provide other than a reasonable profit in this.

Mr. Shibley: I don't consider that a response, Mr. Gathercole, but I'm not going to pursue it.

Mr. Gathercole: What I'm saying is that we do have some leverage in this and, as ~~Mr.~~ Mr. Candy mentioned yesterday, ~~we~~ we don't have to sign—or Canada ~~Sq~~ Square can't obtain their withdrawal of money from Prudential until we sign the lease.

Mr. Shibley: You may have a damage ^{action} ~~and these~~.

Mr. Gathercole: So we have some leverage in that.

Mr. Shibley: You'll have another lawsuit on your hands.

Mr. Chairman: I think Hydro's position is quite clear on the matter. Whether we agree with it or not is something else. Mr. Deans you're—oh, Mr. Deans is gone. Mr. Newman.

Mr. W. Newman: Yes, Mr. Chairman, I'm asking Mr. Gathercole, you've been talking about costs and appraised value to the point where we've all got some understanding of what we don't understand. I would like to ask you, were you convinced by your legal staff who were working on this agreement that the appraised value was satisfactory to you even though it wasn't the best alternative? I mean, could you ^{compute that you could} live with it?

Mr. Gathercole: Certainly, the impression I had, it was something with which we could live on the basis that Hanscomb ~~and~~ Roy would be providing costs of the figures and also that we'd have somebody on the job ^{who} ~~that~~ would be taking off these cost figures reproduction and this would be related to the redevelopment, ~~reconstruction~~ costs

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Mr. W. Newman: In effect, you took legal ~~advice~~
advice

Mr. Gathercole: We didn't ignore the legal advice that we had obtained.

Mr. Renwick: Mr. Chairman, I want to clarify that conclusion of Mr. Newman's. First of all, the counsel who was retained by Hydro was Mr. McCallum.

Mr. Gathercole: Yes, who performed well.

Mr. Renwick: What is your understanding of Mr. McCallum's position with respect—no, what is your understanding of the advice which Mr. McCallum gave you on the question of the problem of costs or appraised value?

Mr. Gathercole: Mr. McCallum did raise the point of the change from cost to appraised value and emphasized that the Hydro would be most effectively protected by ensuring that they got a \$34.00 value building and that the responsibility would rest upon Hydro to ensure that. But he also indicated that, with respect to the operating clause, ~~which~~ should the cost fall below \$34.00, that we would have an opportunity here based upon appraised value to obtain some benefit providing that that appraised value was below that of \$34.00 a square foot.

Mr. Renwick: I think this is important to me, Mr. Chairman. Did Mr. McCallum specifically raise, or draw to your attention, the problem which had arisen with respect to cost and that they had had to accept in the contract something other than cost which was designated as appraised value?

Mr. Gathercole: He was very disappointed that he had not been able to obtain, in the negotiation, the right to have access ~~to~~ to the books of Canada Square and, also, ^{that} the base amount there would be related strictly to cost, yes.

Mr. Renwick: Did he make it clear to you that, in the ultimate sense, the decision as to whether you would accept it or not had to be Hydro's?

Mr. Gathercole: It was our decision and we recognized that.

Mr. Bullbrook: I'd like to—oh, I'm sorry, I thought you were finished.

Mr. Chairman: No, and Mr. Newman's not through, and Mr. Allan, I think I was going to let you in next.

Mr. Chairman: No, you had to follow up on that point
did you not, Mr. Allan?

Mr. Allan: Mr. Chairman, I don't think Mr. Gathercole has been at many of the sessions of the committee lately but, if he had, I think he would understand that the phrase

(Tape H-2501 follows)

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AA

(Mr. Allan)

~~If he had I think he would understand that the phrase~~

"appraised value" seems to have a very different meaning to different persons. I listened to your remarks just now and I gathered from your remarks that your understanding of that phrase "appraised value" would mean the replacement value of the building.

Mr. Gathercole: Yes.

Mr. Allan: Taking that as a basis, would inflation not enter into this?

Mr. Gathercole: NO, IT WOULD NOT.

Mr. Allan: Well, the replacement value of the building—how do you replace a building yesterday?

Mr. Gathercole: ~~Yes~~ Yes, but it's the replacement or reproduction value during the period of time from the date of ~~the commencement of~~ ^{the commencement of} construction ~~and that's when the appraised value~~ ^{construction} of the building.

Mr. Allan: Well, do you think it might not have been helpful if there had been a statement ~~included~~ ^{included} in the agreement? It hasn't seemed possible to get agreement as to what the phrase "appraised value" really means.

Mr. Gathercole: That's what we have discovered.

Mr. Allan: ~~There~~ There was just one other little thing and I . . .

Mr. Chairman: Can you do without it because

Mr. Newman ~~is so critical about his opinion~~ ^{has something?}

Mr. W. Newman: I now to no certainty.

Mr. Allan: No, you go on. I had another question.

It isn't connected with this.

Mr. Chairman: I would like some order. If you only have one more question, ask it now, Mr. Allan and you'll be ~~out~~ ^{the way} I'd like to say you'll be out of ~~but~~ . . .

Mr. Allan: This question came to me as a result of the reading of MR. Smith's letter to Mr. Sequin this

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2501 - 2 AA

(Mr. Allan)

morning, and the Commission have been coming in for some criticism this morning, and I am wondering if the Commission knew that the statement in that letter was a fact when Mr. Smith said that it was extremely difficult to quote on a building when ~~we~~^{he} had only verbal specifications. I am wondering if the Commission were aware of that.

Mr. Gathercole: These were followed up, Mr. Allan, with written specifications, by Mr. Candy subsequently.

MR. Allan: Yes, but the quotes were already in.

Mr. Shibley: That's right.

MR. Bullbrook: Are you familiar with that Mr. Gathercole?

Mr. Gathercole: No.

Mr. Allan: No, I wouldn't think that you would have been. Thank you.

Mr. Chairman: Finally, Mr. Newman, back to you sir.

Mr. W. NEWMAN: Mr. Gathercole, I TALK TO YOU NOW as chairman of the Ontario Hydro ^{Electric} Power Commission, ~~of Ontario~~ I believe back in May of 1972, you wrote a letter to the Premier, after your trip to Japan with Mr. McKeough, indicating that Government Services might — should be involved. Did you ever think back — I am sure you ~~did~~ do in retrospect — but ~~did~~ you ever think at that time that maybe you should seek some outside expertise on these proposals, to give you some advice and guidance?

Mr. Gathercole: Yes, I think it would have been very advantageous had we done so earlier. Now, we did bring in Harries, Houser, Brown and McCallum — James McCallum — who have done very well for us in my judgement, sorting some of these things out, But it is a very complex, sophisticated area. ~~Now~~ Now, who would we have hired? Maybe we should have

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2501 - 3 AA

(Mr. Gathercole)

hired someone like A. E. LePage or someone of that sort and pay them the bill.

Mr. Renwick: They couldn't do it.

Mr. Gathercole: I mean, who do you hire, and this is the one question. Now, we thought we had expertise in our own establishment, that Mr. Candy had handled every other responsibility, and I am not blaming Mr. Candy at all. He is a very outstanding person and has my full support. But, nevertheless, a person has done exceedingly well over a long period of time and he thinks he can handle it, but maybe some of the difficulties are more complex. There is a terminology in this development ^{field} which we have all learned, ~~isn't that right?~~ Sitting around here — *which is strange to others.*

Mr. Renwick: I don't want us to be sharing the responsibility for Hydro's decision. Nice try, MR. Chairman.

Mr. Bullbrook: I wonder . . .

Mr. Renwick: When you sit in the LEGISLATURE . . .

Mr. Bullbrook: . . . *on* this very point. . .

Mr. Renwick: . . . the attractiveness of the club is very evident and we are not joining your club today.

Mr. Bullbrook: ~~is~~ *On* this very point of the disappearance of Government Services ~~that~~ the last question that I WANT TO QUESTION Mr. Gathercole on, if I may . . .

Mr. Chairman: Are you through on that point?

Mr. W. Newman: *I'm* through on that point.

Mr. Bullbrook: I want Mr. Gathercole to have available to himself, if he could, exhibit 40, exhibit 178 and Hansard of Tuesday, the morning session, September 11th, — just so that he has them. I am going to read from them but I . . .

(Mr. Chairman)

Mr. Chairman: What was the reference to Hansard?

Mr. Bullbrook: Hansard, Tuesday, September 11th, morning session and I am going to refer to page 2283 - 1.

Mr. Chairman: You might take what you have here.

~~Oh, you have got the HANSARD there.~~

Mr. Bullbrook: Rather than holding you up, may I go ahead, because I do want to read.

Mr. Chairman: Yes, fine.

Mr. Bullbrook: If Mr. Genest is agreeable that I go ahead.

Mr. Genest: You have^{??} to ask my permission, do you?

Mr. Bullbrook: No, seriously, you have been so mean to me the^e last two days. Mr. Gathercole, ~~Mr. NEWMAN~~
~~elicited from you the response that perhaps in hindsight~~
~~and retrospect~~

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V.H.

(Mr. Bullbrook)

Mr. Newman elicited from you the response that perhaps in hindsight and retrospect you might have been better advised to seek a ~~greater~~ ~~was~~ expertise. I want to know really what happened to the expertise that was afforded to you. On page 2283-1, the evidence given by Mr. McKeough[^] and I am reading from about two-thirds of the way down, or the second paragraph. It reads:

"Certainly in listening to Mr. Gathercole describing the complexities of the whole thing, I didn't think that I was competent, certainly[^] he wasn't asking me[^], but I wouldn't have ~~xxx~~ been competent to decide which of four or five proposals made the most sense from the point of view of Hydro, and that I didn't think ~~that~~ there was that kind of expertise in Hydro to do it.

"And I suggested that perhaps they should have a consultant or perhaps should use Government Services who might have that kind of expertise. I've since become convinced that probably they didn't but I thought that some assistance was needed; whether it was Government Services or an independent consultant, I wasn't hung up on that."

Now, I take it that that discussion -- I take it that you would agree that Mr. McKeough and you had that type of discussion; that was the ~~general~~ tenor of his remarks?

Mr. Gathercole: I think his main thrust was that perhaps the matter could be put ~~in~~ before the Department of Public Works,[^] the Ministry of Government Services, and that was the main intelligence which I carried away from the conversation. As to the matter of engaging consultant,[^] I haven't any recollection of that but I am not denying it in any way.____

Mr. Bullbrook: I want you to understand that my line of questioning has nothing to do with the fact of whether you should or should not have hired an independent consultant. I want to find out where Government Services

(Mr. Bullbrook)

faded into oblivion and why they did. You, logically, Mr. Gathercole, I put to you, as a result of that discussion on May 16 which is exhibit 40 again reproduced as exhibit 178, you wrote to the Premier and you said and I quote from the letter:

"Darcy indicated that he was receptive and suggested that we start the governmental-procedure ball rolling by having the Ontario Department of Public Works review it. I would be very pleased to have your advice."

Then, if I may, Mr. Gathercole, I refer to exhibit 178, which, as I say, is a reproduction of exhibit 40, but there is a notation you will see dated June 9, apparently made, according to the evidence, by Mr. Rowan, and it says:

"Premier spoke with Gathercole a few days ago and confirmed that Government Services the proper place to start."

As I recall the evidence of the Premier and I believe supported by yourself, that conversation didn't take place.

Mr. Gathercole: That's right.

Mr. Bullbrook: The evidence of Mr. Fleck, given in response to my colleague Mr. Renwick, was almost majestic in the mental gymnastics.

Mr. Renwick: Jesuitical!

Mr. Bullbrook: I don't know whether I need to resent that having been a scholastic philosopher myself.

Mr. Genest: Rise on a point of personal privilege.

Mr. Bullbrook: I don't want to bring religion

into this *at all.*

Mr. Shibley: Why not?
Mr. Bullbrook: Now may I say, sir, that I just want you to know, sir, in cutting off the line of why Government Services wasn't dealt with, as I understood Mr. Fleck's evidence, he in effect said to Mr. Renwick it wasn't dealt with because there was a notation that said that it had been dealt with, notwithstanding

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(Mr. Bullbrook)

the fact that we knew that there was no substance for the notation; that basically was the evidence. That stopped Mr. Renwick absolutely cold, and I could understand it.

But now this is what I want to put to you and I am going to put it to you very bluntly. There are two interpretations as to why Government Services faded into oblivion, ~~one is there were~~

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B.A.

H-2503-1

(Mr. Bullbrook)

~~very clearly. There are two interpretations as to why~~
~~Government Services faded into oblivion.~~ One is, they were told to fade into oblivion. I'm going to put that directly to you, that somebody didn't want Government ~~Services~~ Services in there because they wanted Hydro to make this ~~decision~~ decision, they didn't want government to be involved in this decision, and I don't want that to rest as a possibility for us to consider in connection with our responsibility. I want to ask you, sir, you got no response from the Premier.

Mr. Gathercole: That's correct.

Mr. Bullbrook: You got no response ~~to~~ from the Premier.

Mr. Gathercole: And we proceeded with the building and exercising our right to make the decision. We were anxious to get ahead.

Mr. Bullbrook: Now, help me, did anybody - did you carry forward at all any further liaison with any official of the government with respect to the utilization of the Department of Government Services.

Mr. Gathercole: No.

Mr. Bullbrook: Could you explain why?

Mr. Gathercole: Well, the explanation is this, that
— I think I gave this evidence earlier.

Mr. Bullbrook: I'm sorry, if you did I apologize to you.

Mr. Gathercole: I think the explanation is this, that we haven't in the past had any relationship of this nature with the Department of Public Works, or the Ministry of Government Services, which has a pretty big plate of its own and we felt that we should carry on and undertake this project ourselves without involving the Ministry of Government Services. On the other hand, on the basis of Darcy McKeough's suggestion to me, I felt bound to make the submission to the Premier to this effect, ~~But~~ I did feel, however, that we were better to proceed

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(Mr. Gathercole)

on the basis of getting this building on-going ourselves.

Mr. Bullbrook: I want to clarify this. I can well recognize that you had no involvement with Government Services before of a large nature, but you hadn't built a \$45 million head office building ~~before~~ before, and in the context of the Treasurer of Ontario saying to us, as I understood his evidence to be, ~~I think you should~~ that you don't have sufficient expertise in Hydro, I think you should deal with Government Services, and it is obvious because of the letter that you accepted that advice. I just want to know, do I understand it from your evidence that it just evaporated in effect, and I don't use that particular verb with any nasty connotation, did it just evaporate, the question of using Government Services?

Mr. Gathercole: We didn't take action on it. We proceeded to examine the possibilities of having a building erected by various developers and we elected to proceed with Canada Square which had ~~an~~ previous experience with the province, which the province had found to be satisfactory, or presumably, as far as we knew, *it* had found them to be satisfactory, and the people up at the ~~the~~ OISE building, even from Dr. Jackson, the director, have been high in praise of the performance of the OISE building.

Mr. Bullbrook: I am not talking about the justification sir, of the choice of Canada Square, and perhaps you aren't either.

Mr. Gathercole: No. No~~o~~, I'm not, but I am saying this is why we went ahead. I thought we were taking a page out of the province's book in this ~~the~~ case.

Mr. Bullbrook: Right. Sir, something that causes us all concern having knowledge of Mr. Fleck's great administrative talent, is the notation here, which flies in the ~~face~~ face of the evidence of the Premier and the factual situation. I want to ask you, since this notation says, "The Premier spoke with Gathercole a few days ago and confirmed that Government Services¹⁵ the proper place to start".
A

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B.A.

(Mr. Bullbrook)

And since that has been negated, did you have any discussion with the Premier when he told you that you shouldn't deal with Government Services?

Mr. Gathercole: No, absolutely not. None.

Mr. Bullbrook: All right. This is for the purposes of the record, we must have it straight. Did you have any discussion with any governmental official who advised you not to continue with Government Services?

Mr. Gathercole: No, none whatsoever. It was a decision we made entirely on our own.

Mr. Bullbrook: Was it a direct decision you made. I am interested in this. Was a decision that you made not to deal with government services, or did the lack of response from the Premier lead you to believe, as it might well logically do, that he didn't necessarily want you to deal with Government Services?

Mr. Gathercole: Well, I felt, in sending the memorandum and not getting a response to it that he was assenting to us proceeding. Now, we didn't require his assent except in the matter of money. We had the authority to proceed with the erection of the building. On the other hand, we do maintain a liaison there and would not wish to be bucking headlong into government policy, particularly as this was, as you can understand, a political matter.

Mr. Bullbrook: I realize that but aside from the financial aspect of things which really isn't concerning me and I can understand your position and your knowledge with respect to that, but you have discussed with the Treasurer of Ontario, this matter, and he suggested to you, according to his evidence

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JLP

(Mr. Bullbrook)

~~and your knowledge with respect of that. But you have discussed with the Treasurer of Ontario this matter, and he suggested it you~~

according to his evidence, he advised almost, certainly he took issue with the use of the word "impressed" on the next page of his evidence, and when Mr. Shibley said it was a suggestion - I'm sorry, Mr. McKeough said it was a suggestion, I find it difficult to understand, having regard to the fact, that the Treasurer suggested the use of Government Services, that the lack of a direct response from the Premier, would put you in a position of just forgetting about the use of Government Services.

And, in that respect, I don't want to complicate the question too much, it's not whether you used them or not that I'm interested in, it's why Government Services seemed to leave your mind and leave the mind of the Commission?

Mr. Gathercole: I find that difficult. I had to answer, the only answer I can say is this that if there had been a response to it, yes, let's get the thing before the Ministry of Government Services, we would have done so. But, in the absence of a response to it, then we were proceeding anyway. And I was passing on the comment or observation which I believe to be foremost in Darcy McKeough's mind, that is, to put it before the Ministry of Government Services. But, we were proceeding on our own anyway ~~xxxxxx~~

Mr. Bullbrook: Without an imputation of responsibility, it's fair, then I take it to say that the lack of response by the Premier's office to your letter of May 16, 1972, when you requested his advice, led you to believe that the utilization of Government Services in connection with the Hydro building wasn't necessary?

Mr. Gathercole: I think that's the inevitable conclusion. I would say this that we have, as I've explained before, the responsibility to proceed with it, and to get the [✓] we have the authority to go ahead and erect the building.

Mr. Bullbrook: I don't think there's any doubt of that.

Mr. Gathercole: And it is common practice to do so, in the wide area of involving the purchase of *turbo* generators,

(Mr. Gathercole)

buildings of a billion dollars or more, —

Mr. Chairman: You may have other questions, but actually that was an interjection on Mr. Newman's original question and the floor is really still his so,

Mr. Bullbrook: Oh, I'm sorry; he permitted me, though, and had he known that it was on the point —

Mr. Chairman: Well, yes, out of a point that he had made, and then you were taking it from there, ^{so} I have Mr. Renwick and Mr. Glen Hodgson, but back to Mr. Newman.

Mr. W. Newman: Yes, Mr. Gathercole, and it is your duty ^{Electric} as Chairman of the Ontario Hydro/~~Electric~~ Power Commission, I'd like to — as we've been sitting here for three months ^{talking} about that building over there, and I'd just like to put back in context this building as related to your duties. It's really a two-fold question: One, how much money do you spend in the average year in the Hydro? You are very personally involved, I assume, in the billion dollar nuclear development programme; you are involved in other buildings being put up; you are involved in transmission lines various transmission lines in the Solandt Commission and so on and so forth. I am just trying to relate the building that we are discussing here, in context, of your duties as chairman. How much do you spend in an average year in the Hydro Electric Power Commission in the Province of Ontario to start with?

Mr. Gathercole: Well, our operating revenues and costs would run in the order of three quarters of a billion dollars, or in excess of three quarters of a billion dollars. Our capital expenditures are equivalent to that. So, our capital and ~~extraordinary~~ ordinary outlays are of the order of \$1.5 billion ~~dollars~~. And we are committed, we have \$5.5 billion of physical assets of plant, and other liquid assets; we have commitments which run up to \$4.5 billion on new plants and so on. And we're dealing with matters of coal supplies, oil supplies, new innovations, and meeting our requirements, obtaining heavy water, and all these related subjects, including raising the money, that is to say, bond issues, rates for municipalities, rates for rural customers, rates for the

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JLP

(Mr. Gathercole)

direct industrial customers. ~~and~~ So no one in the position that
I have can to devote other than a smattering of his time to this.
But I, personally, have an interest in the building ~~because~~

(Tape H-2505 follows)

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12:55 - 1:00 p.m.
D.L.

(Mr. Gathercole)

~~of this building, this but I personally had an interest in~~
~~the building,~~ myself, because I felt that we've been
frustrated ~~for~~ for four and a half years in doing it. I
felt that if we didn't get it going now it would be
another five years before we could start, and at that time
the cost of that building would probably ^{have} run up about
four or five million dollars a year, so I felt that this
was desirable to save the power uses ^{some} of money ⁱⁿ ~~the~~ this
inflationary cycle and get it going.

Mr. W. Newman: Yes, well, Mr. Gathercole, what I
was just trying to get from you ^{is} that you have many, many
other duties that you ~~are~~ deal with directly as Chairman
besides just this ~~one~~ building.

Mr. Gathercole: Yes, thank you.

Mr. Chairman: Any further questions? Mr. Renwick.

Mr. Renwick: Mr. Chairman, I want to ask Mr. Gather-
cole some questions and I want Mr. Gathercole to quite
understand ^{because of} ~~that~~ the interjection ^{of Mr. General} this morning
and so on, that my remarks are not designed ~~to make~~ in these
questions or in the questions which I had this morning to
give Hydro a hard time. It's another aspect which may have
sounded ^{as if} ~~that~~ Hydro is a bit under the gun. This isn't the
point, ~~and I want~~ ^{al} It was partially under the gun but that
isn't the focal point that has been in my mind in the ~~the~~
course of these questions.

Mr. Gathercole: Well you've been very fair, Mr. Renwick.

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Mr. Renwick: Well, I want to pick up some aspects of what my ~~I~~ I'm sorry he's not here; oh, he is ~~what~~ what my colleague Mr. Bullbrook has had to say on the letters and there are three areas that are of concern to me and I think I want to go at them backwards. By November ~~the~~ 7th, which is a date on which Mr. Fleck had noted in his diary of ¹⁹⁷² ~~the~~ the "Cronyn & Hydro - Ellis-Don" notation, ~~which~~ of which you are undoubtedly aware, possible press concern about the whole Hydro story. Now, I would appreciate it ~~to~~ ~~be~~ ^{sel's} if I could have Council's help during the course of these if I may. By that time we have a situation where the Premier's right-hand man, Mr. Fleck, and the Chairman of the Committee on Government Productivity, who through Task Force Hydro is closely involved in the inter-connection with the government, and I take it that Mr. Fleck and Mr. ~~Cronyn~~ Cronyn in their own way are very close to the Premier of the province in their respective spheres of operations, and I take it that despite the suggestion of a press in stories about Hydro, that despite the further notation in Mr. Fleck's diary on November ~~the~~ 9th about getting a narrative from you, despite the knowledge shared at a meeting between Mr. Cronyn and Mr. Fleck, the date of which is indefinite, but was some time prior apparently to November ~~the~~ 3rd or in the latter part of October, that neither Mr. Cronyn nor Mr. Fleck or any intermediary on their behalf at any time ~~had~~ drew to your attention a very substantial criticism of the way in which this head office operation had been dealt with.

Mr. Gathercole: That is absolutely true.

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1 - 1205 pm
C.B.

(Mr. Renwick):

if I can go back to August of 1972, the period of the Seguin letter and the Dillon suggestion to Smith that he write to Seguin. The informal meeting of the commission at which Mr. Seguin raised the question of the letter without disclosing the name of the person involved in the letter and the subsequent commission meeting at which he made a further reference which led to Mr. Gordon wanting to have a statement prepared in ~~a~~ case there was criticism. So that at that point in time Mr. Cronyn is aware of the criticism, ~~the~~ the chairman of committee on government productivity. Mr. Dillon the executive director of Task Force Hydro is aware of the criticism of Ontario Hydro and ~~of what should~~ that there was substantial criticism involved despite the ~~the~~ degree of detachment that they may have wished to keep from it, they were aware of substantial criticism.

Despite the raising in private session by Mr. Seguin of the matter and of the subsequent raising undoubtedly, indirectly at a commission meeting of this background of concern, that again nothing came through to you as chairman of Hydro and to the extent that you can rely, as you do rely, on the team effort of Hydro and the loyalty of the Hydro staff within itself, that again no-one, Mr. Cronyn, Mr. Dillon or anyone else, brought to the attention of Hydro substantial rumblings of criticism with respect to this matter and that the critic out there, justifiably in my judgement, was raising a serious question about what had happened.

Mr. Gathercole: Can I answer in this way?

Mr. Renwick: Yes.

Mr. Gathercole: There was never at any time any suggestion of this criticism or of any criticism emanating from Ellis-Don, now that's clear. ~~Re~~ Roger Seguin in his discussions at the meetings says "make sure of your facts, make sure of your ground." Yes, now he did say that.

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1 - 1:05 pm

C.B.

Mr. Renwick: I understand that.

Mr. Gathercole: That is as far as it went.

Mr. Renwick: But I take it that in ~~there~~ that kind of indirection that was involved in all this, or lousy communication, if one ~~water-tight~~ wants to put a ~~more~~ stronger term on it, the assessment of what that atmosphere was, ^{was} simply a matter which should be dealt with from a PR point of view and was not a matter which would direct your attention or the ~~members of your~~ top members of your management attention to the fact that we should call a halt in the summer of August 1972 and reconsider our decision.

Mr. Gathercole: That is true, otherwise had it been we most certainly wouldn't have gone through the painful experience that we have. Had we been anticipating anything like this we would have halted the whole damn thing. There ~~wasn't~~ wasn't any of that sensitivity of this being an issue of that dimension.

Mr. Renwick: Again Mr Cronyn and under him Mr. Dillon as executive director of Task Force Hydro being aware of this problem, again to use the term which I've used before which is at least polite, the water-tight compartment operation remained water-tight, the information didn't come through.

Mr. Gathercole: I had no knowledge of it what so ever. They did not speak to me, none of these persons spoke.

H 2407 to follow

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DT

Mr. Gathercole: I had no knowledge of it whatsoever. They did not speak to me. None of those persons spoke to me.

Mr. Renwick: Now let me go back to ~~the back~~
~~the~~ May 16th. Could you tell me May 16 ~~exhibit~~ exhibit number

Mr. Chairman: 178.

Mr. Shibley: 178 is the one with the notation.

Mr. Renwick: Yes, I am talking about the actual original of your letter that went to the Premier's office. I think you have it in front of you.

Mr. Gathercole: I have got in front of me.

Mr. Renwick: I want to follow along what -- Mr. Bullbrook and I share a great interest in this aspect of it. Let me deal with the second note at the bottom on the right side. "The Premier spoke to G ~~policy submission~~ (something) policy submission sent to Cabinet".

Mr. Gathercole: That was related to --

Mr. Renwick: The ~~32~~ second paragraph.

Mr. Gathercole: Yes, right.

Mr. Renwick: Do you recall that conversation?

Mr. Gathercole: No, I don't recall that -- well I recall the conversation that I had with the Premier relating to that transmission - yes, because that was at the time, if my recollection is correct, that there was discussion about Dr. Solandt being appointed to be a ~~xxx~~ one man commissioner on that line.

Mr. Renwick: I think my point is obvious but I want to make the ^{record} perfectly clear. The last ~~xx~~ paragraph of the letter of May 16th, being exhibit 178, from Mr. Gathercole to the Premier said: "I would also be glad to have your advice as to whether there are any further developments on the extra high voltage transmission line from ~~Nanticoke~~ Nanticoke Generating Station to the Pickering Generating Station And the notation in the margin is: "Premier spoke to G (something) policy submission sent to Cabinet," and my specific question is that as a matter of response to your request for his advice in the letter of May 16th, did the Premier speak to you so that you received his advice with respect to that paragraph?

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DT

Mr. Gathercole: The first paragraph?

Mr. Renwick: The second paragraph.

Mr. Gathercole: The second paragraph.

Mr. Renwick: I want you to be perfectly clear. I am talking about the second paragraph.

Mr. Gathercole: Could I explain it in this way?

Mr. Renwick: No. No, Mr. Gathercole, I want your answer. You wrote on May 16th --

Mr. Gathercole: Yes, that's right.

Mr. Renwick: What I am trying to --

Mr. Genest: Mr. Renwick, let him answer in his own way.

Mr. Renwick: I will let him answer in his own way in a ~~nine~~ minute. I am sorry to interrupt but I don't want any misunderstanding about what the point is I am trying to make. Your letter, Mr. Gathercole, has two paragraphs. Each paragraph invites a response. I am now directing your attention solely to the second paragraph and to the second marginal note which I consider refers to the second paragraph. You wrote the letter on May 16th. Did the Premier speak to you with respect to the advice you sought in the second paragraph?

Mr. Gathercole: All right. He spoke to me on the matter that is ~~involved~~ involved in the second paragraph. I would suggest that that would be extraneous to this letter. It was a matter which was of imminent importance to ~~us~~ at that particular time because he had received, as I recall it, a petition from the concerned citizens of Chinguacousy, etc., and he wanted to make a determination of what he should do to cope with this problem over protest arising over the construction of this transmission line.

Mr. Renwick: May I narrow the question? Mr. Shibley, can you give me the date on which Mr. Fleck gave evidence that these notations were made? Is it the June 9th date at the top.

Mr. Shibley: Yes, that's my understanding.

Mr. Gathercole: June 9th.

Mr. Shibley: Mr. Renwick, the notation was dictated on the 9th but you remember, he ~~was~~ was away --

Mr. Renwick: I understand. →

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B.G.

~~(Mr. Shibley)~~
~~in the room.~~

~~Mr. Renwick: I understand~~

Mr. Shibley: And I think the reference was to a June 1 meeting.

Mr. Renwick: Yes, ~~Now~~ do you recall —

Mr. Shibley: And incidentally, Mr. Renwick, I'm sorry to interrupt you again, there was a meeting on June 1st between Mr. Gathercole and the Premier at 11:00 a.m.

Mr. Renwick: At 11:00 a.m. on June 1st.

Mr. Shibley: That's right.

Mr. Renwick: Do you recall discussing the matter referred to in the second paragraph with the Premier at the meeting on June 1st?

Mr. Gathercole: I discussed it with ~~him~~ him at a meeting, whether it was June 1st or not, I don't know. ^{But} ~~It~~ It was related to discussion as to the appointment of a Commissioner to examine into a route for this high-voltage line.

Mr. Renwick: I appreciate your concern about the aspect of it that I'm asking about. This note marked June 9th and your letter dated May 16th, assuming those are the time periods, would indicate that between May 16th and possibly at the meeting on June 1st, but certainly between May 16th and June 9th, the Premier spoke with you about the second paragraph of your letter.

Mr. Gathercole: Yes, although as I say, I think it was incidental to the letter.

Mr. Renwick: But you don't recall when it was in that time interval?

Mr. Gathercole: I think I did previously give some evidence, with respect, ^{to it, but it} ~~was~~ was at —

Mr. Renwick: Well, I ~~don't~~ was perhaps ~~don't~~ being a little over — I wanted to correct that aspect of it. I now want to come, Mr. Gathercole to the —

H-2508-2

September 13, 1973
1:10 - 1:15 p.m.
B.G.

Mr. Chairman: Mr. Renwick, can I just interrupt a minute?

It's about —

Mr. Renwick: ~~Is~~ I'm only going to be ~~one~~ —

Mr. Chairman: All right, Mr. Hodgson has another question or two, but ^{generally} Mr. Hodgson is ^{relatively} ~~going to be~~ short.

Mr. Bullbrook: I have ~~a question~~ another question to raise.

Mr. Chairman: How long will you be? Have you any idea, Mr. Bullbrook?

Mr. Bullbrook: I would think at the most five minutes.

Mr. Genest: Let's stay at it.

Mr. Chairman: Stay at it?

Mr. Genest: I am sure Mr. Gathercole ^{would rather} ~~can~~ go without lunch.

Mr. Renwick: ~~I would prefer to because it's all one train~~

~~of thought~~

Mr. Chairman: All right.

Mr. Renwick: I would prefer to because it's all one train of thought, and I want to get it over and I am sure Mr. Gathercole wants to get it over.

Mr. Chairman: Well, I had some sympathy for Mr. Gathercole's position in the — so, ~~if~~ if you will all keep that in mind. Continue, Mr. Renwick.

Mr. Renwick: Again, because I'm trying to clarify in my mind certain matters, I ~~may~~ may overstate things, but I want to make it clear and Mr. Genest will interrupt me if I overstate them.

Mr. Chairman: Don't invite him to.

Mr. Genest: I don't need one.

Mr. Renwick: My understanding of the sequence of your communications with the Premier runs simply as follows: that at the opening of the Pickering Generating Station in February 1972, you took advantage of that opportunity to have a word with him and he indicated that he saw no objection to your going ahead with the head office project, but that he wanted you to speak to the Treasurer. Is that right?

Mr. Gathercole: ~~Yes, mainly related to the — you know, how it should be financed.~~

Mr. Renwick: I understand, I understand. And this is the part I want to overstate, that at that particular juncture in

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(Mr. Renwick)

the history of the government of the Province of Ontario, certainly between February and May and June of 1972, if the ^{Premier} ~~Premier~~ was first amongst equals, Mr. McKeough was second amongst equals. Right?

Mr. Gathercole: Concur.

Mr. Renwick: Did we agree on that?

Mr. Gathercole: Concur.

Mr. Renwick: Now, you then, on the trip to Japan took the opportunity to raise with Darcy McKeough, in that important role in the government of the Province of Ontario, this question. And you cleared out because you had pretty well decided to go the lease-borrow arrangement or through that —

Mr. Gathercole: Lease-~~repurchase~~ that

Mr. Renwick: — mechanism.

Mr. Gathercole: Yes.

Mr. Renwick: That therefore the credit of the Province was not going to be ~~it~~ involved, and that was the ^{immediate} ~~concern~~ of the Treasurer.

Mr. Gathercole: Particularly as the Province itself was embarking more and more on this course, it would seem rather unusual for us to be doing it.

Mr. Renwick: Yes, and I make no — No, I'm not — I make no point about the choice ^c of this method, that's all ^{OK right} ~~correct~~. But that in the course of that discussion, the second man in the government of the Province of ~~Ontario and he very politely said~~ ^{this} ~~this~~.

(Tape H-2509 follows)

(Mr. Renwick)

~~discussion the second man in the government of the province of~~

Ontario and he very politely ~~said~~ said this, you said, he suggested.

Now a suggestion from the Premier of Ontario in 1969 stopped the building. A suggestion from the, that's an over statement but....

Mr. Gathercole: Well I think it is somewhat, they were really a combination of economic conditions, the province ~~was~~ had deferred the Mowat and Hearst buildings —

Mr. Renwick: I think Mr. Sissons evidence was the order had come down that the building was not to proceed. Again I overstated it and —

Mr. Gathercole: Yes I think so.

Mr. Renwick: Okay. But within the limits of that overstatement the second ^(Pich) in the government of the Province of Ontario suggested to you that the proper route was through — not a proper route but a wise route. —

Mr. Gathercole: This had been established, it would be Mr. MacNaughton.

Mr. Renwick: Yes it would be the Ministry of Government Services.

Mr. Gathercole: He made that suggestion.

Mr. Renwick: That's right and then you come back and in sequence, carefully in sequence on May the 16th, you wrote to the Premier and said in substance to him " I did what you told me to do, I took it up with the Treasurer of the province, he was receptive, suggested we start the government procedure ball rolling by having an Ontario Department of Public Works" and then the correct "Ministry of Government Services review it. I would be very ~~pleased~~ pleased to have your advice."

Now I'm ~~not~~ not going to deal with the marginal note, the record is clear on that. Neither you nor the Premier

(Mr. Renwick)

recall any such call as is in noted in the margin, and this is very much really, perhaps repetition, but only from a point of view of clarifying in my mind a point made by Mr. Bullbrook earlier. As you got no response to the first paragraph of your letter you took the failure to respond as a communication to you of what? Let me put that backwards, some people think that silence is not a communication. I'm saying that silence is a communication. What did you take the silence of the Premier to mean?

Mr. Gathercole: In that effect I took the lack of response to that particular point to be that we were exercising our prerogative and proceeding, our responsibilities in proceeding with the construction of the building. I was brining it to his attention what the ^Treasurer had said. WE had been exploring a number of proposals and that we were going to go ahead. I recognize that in a matter which is of the importance of this kind that the government was going to have - the CABinet was going to have a veto on it, ultimately, and so.....

Mr. Renwick: ~~We~~ understand that but I'm speaking specifically.

Mr. Gathercole: We want to get ahead and so in the absence of a veto on it we proceed, and that is what we were doing prior to that letter and that is what we did following the sending of the letter.

Mr. Renwick: You at no time ever raised again, with the ~~an~~ Premier, the question of ~~G~~overnment Services?

Mr. Gathercole: No I did not.

Mr. Renwick: And you as I take it, saw no reason to, if you got no reply from the Premier, you saw no reason to check back with MR. McKeough about it.

Mr. Gathercole: NO.

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1:15- 1:20 pm
C.B.

Mr. Renwick: So that _____

Mr. Gathercole: We already had orders worth half a billion dollars a year. If you are going to have these things approved or vetted or something you got to have a whole new department.

Mr. Renwick: Well I'm not concerned about that, and I know that Hydro is a large organization.

Mr. Gathercole: I Hope you're not advocating it.

Mr. Renwick: All of you are very, very busy, you are all not just engaged in building the head office building. I take it that you, and I'm being laborious about it, but it's important to me, I take it that the lack of response from the Premier was tantamount to you to being a go-ahead without you having to go through the Ministry of Government Services route.

Mr. Gathercole: In that effect I would have to say yes.

Mr. Renwick: So I take it, and using ¹⁻¹ ~~I'll have other~~ terms which I can use when we are deliberating about the report...

H 2510 to follow

Sep 13, 1973
1.20-1.25 pm
V.H.

(Mr. Renwick)

~~I will have other terms that we~~ - I will have other terms that we can use when we are deliberating about the report about it, but ~~not~~ using my theory ~~about~~ ^{of} the watertight compartments, that in fact from the Premier and the Premier's Office that those who knew of problems related to the head office or those that knew the course that you were going to follow, there was for practical purposes no further communication about the Hydro head office building between you and the Premier's Office or the Premier from the time you spoke to him at the Pickering Generating Station in February, 1972 until, as I take it on the evidence subject to being corrected by the memory of others here, until November or December of 1972.

Mr. Gathercole: I think that would be -- you would have an intermediate point in there. Didn't I send the ~~note~~

Mr. Renwick: Yes, you sent the news release and you got the note back. There was no reply from the Premier ~~and~~ ^{but} you got the note back ~~as~~

Mr. Gathercole: ~~XXXXXX~~ ^{there was} No other communication, correct.

Mr. Renwick: And you got the note back from Fleck saying ~~about~~ ^{but} the decision is yours?

q Mr. Gathercole: Yes, that's right.

Mr. Renwick: When you nudged back in to get some ~~more~~

q Mr. Gathercole: ~~As~~ I considered it was.

Mr. Renwick: Well, if I could leave the ~~a~~ analogy to the watertight compartments, we could say that there was a wall of silence as between Hydro and the government about the head office from February, 1972 until December, 1972 with the exception of the letter that you sent -- the letters which emanated from you, and one of which, the one enclosing the draft press release ^{you} got back this but, of course, you must remember the decision is yours from Mr. Fleck.

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1.20-1.25 pm
V.H.

Mr. Genest: Mr. Renwick, are you asking Mr. Gathercole to agree with the highly coloured expression, "wall of silence"?

Mr. Renwick: No, I'm not. I was perhaps trying to convey my own assessment. No, I am not. I think I have gone far enough.

Mr. Gathercole: Could I make one point here, Mr. Renwick?

Mr. Renwick: Yes?

Mr. Gathercole: Just let me make this point. With one company, we have had orders for ~~turbine~~^{turbo} generators which run up to \$200 million. I haven't said a word to the Premier about those or to any minister.

Mr. Renwick: Mr. Chairman, the only response I am making is that's your business. You have a historic reputation in that field over many, many years. It is not your business to build head office buildings and it is not your business to depart from procedures. Now I recognize all that Mr. Gathercole and I assure you that I will, and I am sure my colleagues will, take all that into consideration. I was only interested in your communications with the Premier and his office from February to November about the head office building.

Mr. Gathercole: Would you also, Mr. Renwick, take into consideration Mr. Roberts' explanation during the course of the debate with Mr. Nixon which I think was back in 1968, in the Legislature, around ~~sixty-eight~~^{'68} I think it was, ~~maybe~~^{or} '67, just shortly ~~was~~ after we had undertaken to have plans prepared. I think ~~it~~^{that} is important as well, because Mr. Roberts spelled it out that this was a Hydro right to proceed with its own building.

Mr. Renwick: I know. I have no question about the legalities of it and I don't think any of us do but again that's another way of stating the so-called watertight compartment problem. I am not trying to be difficult, or

(Mr. Renwick)

legalistic, or awkward, or anything else about it, I am trying to get across that the nub of the problem to me lies somewhere within the matters that we have been talking about. I don't know what my conclusions are going to be. I overstated it in an endeavour to get some clarity about the problem.

Mr. Gathercole: I appreciate that.

Mr. Chairman: Mr. Glen Hodgson. 

H-2511 follows

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B.A.

H-2511-1

~~(Mr. Renwick)~~

~~I overstated it in an endeavour to get some clarity about the problem.~~

~~Mr. Gathercole: Well, I appreciate it.~~

~~Mr. Chairman, Mr. Glen Hodgson.~~

Mr. R. G. Hodgson: Mr. Gathercole, there is also another side to this factor I think I should suggest to you. ~~For~~ For the first time you had a Premier who had been vice-chairman of Hydro and had a thorough understanding of the commission-and-government relationship and the division of ~~some~~ responsibility.

Mr. Gathercole: That is true, and he knew very clearly, ^{been} because he had ~~been~~ at the commission at that time, of the pressing need for us to get an office building in which we could house our staff in an economical way and co-ordinate their activities.

Mr. R. G. Hodgson: He was also telling you that that responsibility was the commission's.

Mr. Gathercole: That's right.

Mr. R. G. Hodgson: From time to time.

Mr. Gathercole: Yes.

Mr. R. G. Hodgson: I think that has to be made perfectly clear that you understood that he knew the division of ~~the~~ responsibility thoroughly. The other point I would like to ask ~~the commission members~~ you, when ~~you were at the~~ the commission members met in your office with Mr. Seguin with regard to the letter of the 21st, in which he didn't name Ellis-Don, but a vital part in that letter ~~that~~ is the notation that one of the strong points that Mr. Smith thought he had in his presentation, was the opening of the books. Did Mr. Seguin mention that that was one thing we had ~~to~~ to watch or be careful about or have disclosed?

Mr. Gathercole: There is considerable evidence on this, but to the best of my recollection, Mr. Seguin did not enumerate any of the items in that letter, but simply said, "You had better be sure of your ground, be sure of your facts."

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B.A.

Mr. R. G. Hodgson: That is why I made the statement.

I thought it was unfortunate he wasn't present at the meeting at which McCallum was, because he would have this background knowledge to enquire about it.

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: Mr. Gathercole, you have been here a long time and I assure you I am going to be very brief. I just wanted to understand one point, that escapes my understanding. IN connection with Mr. Colin Brown's telephone call to you, I believe you characterized it earlier, ~~and~~ ^{or} I am not sure ~~that~~ ^{whether} our counsel did, that he put in a good word for Mr. Smith, and you recognized it as such. I don't understand, and, I don't know if you have Exhibit 232 there, I just want to read it to you.

Mr. Gathercole: I think I remember it, anyway, ~~he~~ ^{but} go ahead.

Mr. Bullbrook: Do you remember it? If I ~~remember~~ might read, Mr. Gathercole. He says, "P.S. I have just talked to Colin Brown who was talking to ~~Mr.~~ ^{George} Gathercole who said he was going to be talking to Darcy McKeough in the next month and thought we were one of the proposals being seriously considered." Why would you tell Mr. Colin Brown that you ~~are~~ ^{were} going to talk to Mr. McKeough? What did ~~that~~ have to do with Mr. Colin Brown?

Mr. Gathercole: Well, I presume that in the course of the conversation I obviously mentioned to him that I would be going out ~~on~~ on a trip to Japan with Darcy McKeough and ~~we~~ might be discussing the financing of the building, and this is how it got translated.

Mr. Bullbrook: I realize you are not the author of these words

Mr. Gathercole: No.

Mr. Bullbrook: You seek these words lead me to — a reasonable interpretation of these words ~~is~~ ^{is} that Darcy McKeough might be a person who would be very significant in the ultimate choice.

Mr. Gathercole: Yes. Think of the trouble we would have been in if Ellis-Don ^{had} got it.

Mr. Bullbrook: As funny as that is, it begs the question

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B.A.

(Mr. Bullbrook)

that I really want to have satisfied in my mind: Would you agree with me, sir, that a reasonable interpretation of these words that "he was going to be talking to Darcy McKeough in the next month and thought we were one of the proposals being seriously considered?" Now, in your own evidence....

Mr. Gathercole: I hadn't any question ~~about~~ that Ellis-Don were being seriously considered.

Mr. Bullbrook: What does Darcy McKeough have to do with it? Why are you telling Colin Brown, who is.....

Mr. Gathercole: It doesn't say that I am going to be telling ~~about~~ ^{Darcy} McKeough that ~~about~~ they are being seriously considered.

Mr. Bullbrook: I didn't say that. No, no, I didn't say that. I am sorry, I am obviously not putting my question properly. What it....

Mr. Gathercole: It is ^{is} that I don't understand. It is not your ~~question~~ fault.

Mr. Bullbrook: No, no. Gaston and Alphonse.

Mr. Chairman: It is probably the Chairman's fault for letting it continue.

Mr. Bullbrook: No, I don't think so.

Mr. Chairman: When I say "continue" I mean continue as far as hour is concerned.

Mr. Bullbrook: I realize that, and I want to be ~~brief~~ brief, but I don't think I have really got a response to what I think is an important question. Sir, you have ^{ve} a discussion with Mr. Colin Brown, right?

~~Mr. Gathercole: Right. He said yes.~~

(Tape H-2512 follows)

H-2512-1

(Mr. Bullbrook)

~~response to what I think is an important question. Mr. Genest has~~
~~a discussion with Mr. Coline Brown, right?~~

Mr. Gathercole: Yes, he calls me.

Mr. Bullbrook: I'm sorry, he calls you. Right. And as I understand the gist of that is he puts in a good word for Ellis-Don. Right? Now we have evidence that during the course of your response to that you say, "I'll be talking to Darcy McKeough about this on my way to Japan".

Mr. Gathercole: Yes.

Mr. Bullbrook: I just wonder what Darcy McKeough has to do with your discussing Ellis-Don's proposal with Colin Brown?

Mr. R.G. Hodgson: I think, in all fairness, Mr. Gathercole has said that he talked to Mr. Brown about golf and perhaps the reflection that he wouldn't be able to have the golf game, that he was arranging with Mr. Brown until after he came back from Japan because he was going over with Darcy.

Mr. Genest: ~~Exhibit~~ Does anything turn on this Mr. Chairman?

Mr. Bullbrook: That's a possible explanation.

Mr. Chairman: I don't think so, Mr. Genest, but I don't want to.

Mr. Bullbrook: What was it? I'm sorry.

Mr. Genest: Does anything turn on this? Is it of any importance?

Mr. Bullbrook: Well, let me say to you, it could turn on this, so you want one possible interpretation, I'll give you the worst possible interpretation.

Mr. Genest: Thanks a lot.

Mr. Bullbrook: I'll give you the worst possible interpretation that I wanted to remove from the record that Darcy McKeough and those in government were going to be very importantly involved in the choice of who was going to get the job.

Mr. Genest: Let's get it out, and put it to Mr. Gathercole that way.

Mr. Gathercole: Mr. Bullbrook, maybe I might explain it this way, that inevitably you receive calls from people who have been asked "Will you call someone and see what you might do", and you

H-2512-2

(Mr. Gathercole)

receive the telephone call.

Mr. Chairman: Never had one in my life, Mr. Gathercole.

Mr. Allan: It's a good thing you're not on the stand.

Mr. Chairman: Under oath.

Mr. Gathercole: The manner in which it is presented to you indicates ~~that~~ they are not being sincere. In other words, they are fulfilling an obligation, and they are making a call, without any intent. I can definitely recall that either in Ernie Jackson's or Colin ~~James~~ Brown's, there ~~was~~ no inference whatsoever that you ought to award this contract to Ellis-Don. There wasn't anything of that sort. It was simply, "Well you know, Don Smith has asked me to call you, and I am calling you".

Mr. Bullbrook: I realize that. And this is what is so inviting, frankly, the questioning, ~~he~~ called you, and one of the responses that you made to the call is that, "I will be talking to Darcy about it". I'll leave it there.

Mr. Gathercole: But the fact of the matter is I didn't raise it with Darcy, because I didn't think it was of any consequence.

Mr. Bullbrook: Thank you, Mr. Gathercole.

Mr. Chairman: Any other members of the committee? Mr. Genest, I understand that you have a series of questions to ask going back to the original thought to build the building. Is that right?

~~XXXXXXXXXXXXXXXXXXXX~~
What?

Mr. Genest:/No such intention.

Mr. Chairman: Ladies and gentlemen~~xxxxxx~~ I think we'll adjourn. Thank you very much, Mr. Gathercole, it has been a strenuous time for you.

Mr. Walker: That's just for lunch.

Mr. Gathercole: May I express my appreciation to all of you for your very conscientious efforts. I think I had better stop right there.

Mr. Chairman: Stop right there, you are ahead. We are adjourned until 2:45 p.m.

The committee recessed at 1:34 o'clock, p.m.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC

Chairman, Ontario Hydro:

G.E. Gathercole

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, September 13, 1973

Afternoon session

2513-2558

Sep 13/73
2.55-3.00 pm
V.H.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE — HYDRO HEADQUARTERS

The committee resumed at 2.55 o'clock, p.m., in the members' board room.

Mr. Chairman: Mr. Shibley, is it Mr. Nastich next?

Mr. Shibley: Yes, Mr. Nastich.

Mr. Chairman: Mr. Nastich is one of our most faithful attenders and one who has been here almost from the start. I think you have almost as good a record as Mr. Shibley.

Mr. Nastich: Not quite?

Mr. Chairman: Not quite?

Mr. Renwick: He will have one distinction probably, that nobody else will have, ~~he~~ ^{he} won't be subject to recall, I hope.

Mr. Chairman: Well, we are still planning to meet tomorrow, you know!

Mr. Genest: Don't be ~~too~~ ^{so} sure.

Mr. Chairman: I am very ~~leary~~ ^e, Mr. Renwick, to make compliments about people because I usually find the next day or the next week that they weren't deserved?

MILAN NASTICH, ~~sworn~~ sworn.

Mr. Shibley: Mr. Nastich, what position do you hold with Ontario Hydro?

Mr. Nastich: I am the assistant general ~~manager~~ manager of finance for Ontario Hydro, as of February 1, 1972.

Mr. Shibley: Had you been employed by Hydro prior ~~that~~ ^{to} that time?

Mr. Nastich: Yes, I joined Ontario Hydro in 1949 in the engineering area, system planning. Subsequent to that, I worked in the management ~~services~~ ^{the computing services division,} division, the Comptroller position, and the property division. Those are the sequence of events up to February 1972 at which time I took over my current job.

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2.55-3.00 pm
V.H.~~Mr. Shibley: Now, as at that time, and we can~~

Mr. Shibley: Now, as at that time, and we can start there in terms of the topic I want to talk to you about a little bit, can you help the committee as to the position with Hydro as to credit and its borrowing problems?

Mr. Nastich: When I took the job over, and relating to this head office building, I had felt that self financing was the proper ~~the~~ course to go. It was during the next four-odd months, as I looked into the credit picture for Ontario Hydro and the availability of funds, that I became convinced, very strongly convinced, that the utility faces a major problem in borrowing. As a result, any relief that we could get as an organization through source of funds other than long-term bonds was most acceptable to me. Now up to that time, my own treasury people had had that viewpoint.

Mr. Shibley: Yes, I know.

Mr. Nastich: You had Mr. Farmer's letter of September 3 but I personally became very strongly convinced that this is the right way to go.

Mr. Shibley: Now, you say you became convinced, but would you please explain to the committee why or on what information you predicated your conviction?

Mr. Nastich: During the ~~late~~ spring of 1972, we did a long-term forecast of our capital requirements based on our nuclear programme. In previous years, Ontario Hydro had at best been able to borrow 1.6% per cent of the total domestic savings in Canada. To carry out the programme that we expected to do, we would not only have to get three per cent of gross domestic savings, almost a double, which means you are doubling the proportion you are taking out of the economy, not only would we have to do ~~that~~ ^{that} but we would have to use up our financial reserves, draw them down very heavily in the next three or four years, and would have to go for rate increases, revenue increases, of about nine per a cent. ~~So we would have to~~

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(Mr. Nastich)

So the financial programme I was facing was a nine per cent a year revenue increase in the foreseeable future, drawing down my financial reserves to the bone, this is the reserve for the stabilisation² of rates, and changing my proportion from 1.6 per cent to three per cent.

Mr. Genest: What's that in dollars?

Mr. Nastich: Well, for next year, we would be talking in the neighbourhood of \$750 million; by 1975 we might be over a billion per year.

Mr. Shibley: Now, I was just going to ask you how the amount involved for this project would relate to your overall financial circumstances?

Mr. Nastich: It's a very small proportion.

Mr. Shibley: Yes?

Mr. Nastich: But it is one of the few avenues of relief that I have as ~~the~~^a financial man. It is in effect half a bond issue; it's \$45 million and we roughly run \$100 million an issue. It's not a large proportion, but in terms of looking at your problem, any relief that you get is very helpful.

Mr. Shibley: Yes. All right. Now then, in that same respect, the measure of relief on the one hand would ~~have to be in turn measured against the cost~~

H-2514 follows

(Mr. Shibley)

~~on the ground it would~~ have to be in turn measured against the cost of doing the transaction on a lease-purchase basis as opposed to funding your own building. Is that correct?

Mr. Nastich: Yes.

Mr. Shibley: And did you recognize that doing a lease-purchase would cost more than funding your own building?

Mr. Nastich: It would for that particular issue. Normally you find that a ~~mortgage~~ mortgage of the type we are talking about here costs about 1/2 per cent to 3/4 per cent, at any ~~one~~ one point in time, ~~more~~ more than a long term bond issue. In other words if we could borrow ⁱⁿ ~~from~~ the United States at 7 1/2 per cent, we would very likely be able to, somebody would be ^{able} ~~able~~ to get a mortgage in and around 8 per cent or 8 1/4 per cent depending on availability. If our borrowing rate is 8 per cent, then you might say your lease-purchase, or mortgage would cost you half a per cent ~~above~~ above that.

However, Mr. Shibley the question of cost of funds relates to how much you are able to borrow also, that if you strain your funds too much, you find you move into a different level of credit. In other words instead of being a triple A borrower in the United States or a double A borrower, you can find yourself moving into an A situation, which means you pay 1/4 per cent right across the board more for your financing. And this has happened to 30-odd utilities in the United States in the last year. That they've slipped from a triple A to a double A, or a double A to a single A, because of the same problem that we are facing that they ~~are~~ are having to put out a lot of paper and bonds.

Mr. Shibley: NOW then what I was really...

Mr. Genest: Could we have an explanation of that

Mr. Chairman.

Mr. Shibley: Something further.

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* 3 - 3:05 pm

C.B.

Mr. Genest: On the over supply, on the putting out too much paper ^{idea} ~~was~~ I think that's a point worth making.

Mr. Shibley: All right.

Mr. Chairman: I thought ^{he} ~~the~~ was being critical of the committee.

Mr. Genest: No.

Mr. Shibley: I don't think there is any lack of understanding of which Mr. Nastich has said. The only thing that I wanted ^{to} ~~to~~ evolve in my next question was; what you are really up against here then, is a decision to take this avenue, for whatever measure of relief it would give the situation you recognize, and weigh that against the additional cost that the lease-purchase would involve Hydro with. Is that correct?

Mr. Nastich: Yes.

Mr. Shibley: And we'll be talking about costs, etc, later on. Now then I want to get a little comment from you as to the foreign exchange risk that was inherent in this transaction, ~~and~~ as it relates to Hydro's U.S. dollar commitments.

Mr. Nastich: IN past years, Ontario Hydro did borrow in the United States for purposes of spending money in Canada. In other words we were looking at availability of capital. We decided we would have to go to the United States to borrow, we'd borrow maybe \$75 million and we'd bring the money back and spend ^{it} in Canada.

In the last two years, as a result of growth in our coal purchases, our equipment purchases, interest payments on previous debt, all the money that we'd borrowed, which was \$200 odd million last year stayed in the United States. It was not repatriated, it stayed in the American banks, we invested it in short term funds and paid off payments during the year for coal, for equipment, as it came through. In other words we have a forecast each year of how much we are going to have

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3 - 3:05 pm

C.B.

(Mr. Nastich)

to spend in the United States, so we try to tailor our borrowing. ~~1~~

When I was listening to Mr. Genest talk on this and his comments were based on my, perhaps, incomplete communication. Whenever you go into foreign currency Mr. Shibley, you have a foreign exchange risk. Because you have to go over there and you have to come back. Now if you happen to be a one-time person, one who has no other business interests in the United States, you are at the mercy of the ~~market~~ spot market. You have to go and buy it at that time, ~~and~~ ^{and} exchange rates can fluctuate, and they do from day to day.

In our situation, in view of the long-term bond situation, we are going to be borrowing more money in the United States over the next ten years, than we can spend in the United States. That means we are going to have to be repatriating funds for use in Canada. That means that we have, and I don't like to use the word "surplus", but we have sufficient funds, American funds, available in the United States to handle a contract like this.

Mr. Shibley: I think you may have crossed yourself up in the order of your statement. You mean that you are going to earn more in the United States than you will be spending there?

Mr. Nastich: Borrow. ~~In other words we would~~



H 2515 to follow

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3.05 to 3.10 pm
DT

(Mr. Shibley)
(Mr. Nastich)

~~is the United States than it will be spending there.~~

~~Mr. Shibley:~~ In other words, we would go, Mr. Shibley, and borrow \$100 million, let's say. Our coal payments, our equipment purchases, our interest payments and our Canada Square contract would cost us \$85 million, which we would leave in the United States to pay that. And the ~~right~~ \$15 million would be repatriated or, in view of our longer term situation, we may well invest that in short term rate -- in short term paper.

Mr. Shibley: I understand. In other words, you are looking to the U.S. as a source of funds for \$100 million a year.

Mr. Nastich: Very likely ~~\$300 million - \$400 million~~ \$300 million - \$400 million in the future.

Mr. Shibley: I see.
\$200 million

Mr. Nastich: ~~\$200~~ last year.

Mr. Shibley: And that to the extent that you can use those borrowings to repay obligations in the United States, it's a set-off, so to speak.

Mr. Nastich: Yes, you have deferred the exchange risk as Mr. Allan so ~~well~~ cogently pointed out, until you have to pay the money back.

Mr. Shibley: Yes.

Mr. Nastich: 30 years from now.

Mr. Shibley: Right. Now, then --

Mr. Renwick: Mr. Chairman, may I ask just one question?

Through the power grid, does Hydro generate from the sale of power --

Mr. Nastich: Yes.

Mr. Renwick: -- United States dollars and what is the

magnitude of that?

Mr. Nastich: In past years, Mr. Renwick, we have tended to balance our exports of power with imports of power. They were not long term contracts. They were ones which we sold power to on a sort of an "at will" ~~basis~~ basis. When we had a surplus, we pushed it down there, ~~and~~ and when they had a surplus we ~~we~~ brought it back and we try to, at the end of each year, to balance it out so there is not very much exchange of dollars. In the last two years the American utilities have been in some difficulty so that Detroit Edison, Niagara Mohawk, other ~~the~~ utilities,

(Mr. Nastich)

were pumping a lot of power, so we may be talking in terms of profits of \$25 million to \$50 million, ~~and~~ I have to be that broad because it depends on a water conditions, it depends on their particular position. So it's going to increase, because I ~~think~~ think the American utilities are in serious trouble. They are not going to get out of it very soon and ~~where~~ we happen to be in good shape. We have got a fine power system. We have had good water conditions in Canada. We just happen to be in a situation ^{where} ~~like~~ most American utilities would like to be, so I don't know if that answers your question but it is in the range 25 to 50.

Mr. Renwick: Yes, that does answer my question that you are actually generating—

Mr. Nastich: Yes.

Mr. Renwick: ~~and we are selling~~ ^{by the sale of} power —

Mr. Nastich: United States dollars. ~~And Mr. Renwick:~~ American dollars.

Mr. Allan: Mr. Chairman, could I just clear a point

here? When you mentioned \$25 million, is that income or profit?

Mr. Nastich: Profit.

Mr. Allan: You are worse than Canada Square.

Mr. Nastich: #That's what the utilities down there ~~are~~ saying, Mr. Allan.

Mr. Renwick: I think this, Mr. Chairman, is where Mr. Allan and I got a little bit at cross purposes the other day, because I was talking about the actual generation of --

Mr. Nastich: Income.

Mr. Renwick: — Income in the United States and I was not aware of the magnitude of it, but I assumed that there ~~was~~ was a substantial amount which eliminates that long term exchange risk when you have to pay it back.

Mr. Nastich: Yes, I hope I gave you the right figure. I think that's the order, but I will brief myself on it, Mr. Renwick. There is another way of getting around it.

Mr. Renwick: It's a substantial numbers of dollars for the foreseeable future.

Mr. Nastich: Yes. It's a substantial amount.

Mr. Allan: Then, Mr. Nastich, then you must export a great deal more than \$25 million worth of power.

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Mr. Nastich: Yes, yes.

Mr. Shibley: Do I take it then, Mr. Nastich, that this circumstance as to exchange was a mitigating circumstance in terms of what would otherwise have been the risk of funding this building with U.S. borrowings?

Mr. Nastich: Yes, yes.

Mr. Shibley: You didn't view that risk as seriously as, say, some other party to the transaction might view it?

Mr. Nastich: Yes, I looked upon it as the nature of another American obligation that I had.

Mr. Shibley: All right. Now I would like shown what is exhibit --

Mr. Allan: I wonder though, just before we leave that, Mr. Shibley.

Mr. Chairman: ^{We} ~~You~~ don't want ^{you} to go too quickly, Mr. Shibley.

Mr. Allan: No, but I wonder if we are just clear on the obligation; that is the fact that you have the money in the United States ^A that is supposing the money was at a 10 per cent premium ^A that doesn't mean that you can pay the money in the United States with American dollars and not suffer a loss in comparison to bringing that money back to Canada and getting the premium.

Mr. Nastich: Yes.

Mr. Deans: Wait a minute. Yes, it doesn't mean that, or yes, it does mean that? Now, let me try it again. ~~Do you mean that if you leave the money there you no longer are running the exchange risk?~~

(H-2516 to follow)

H-2516-1

(Mr. Deans)

~~Now it's all in the air~~ Do you mean that if you leave the money there you no longer are running the exchange risk?

Mr. Nastich: You always run an exchange risk, Mr. Deans.

Mr. Deans: Even though you don't take the money out?

Mr. Nastich: You have to take it out sometime. In other words I have to go to the States and, say, borrow my money, and I have to pay them back some time. I can, by various devices, try to moderate that time. I am sort of deferring the exchange risk on into the future.

Mr. Deans: Okay.

Mr. Allan: I think Mr. Nastich could explain this better than, he presently is.

Mr. Deans: He can explain ^{it} better than me.

Mr. Renwick: Mr. Chairman, I take the substance of it to be that to the extent that Hydro is generating United States dollar income in the United States, ~~that~~ that ~~is~~ is a hedge against the future exchange risk when you have to repay these relatively large numbers of dollars later on.

Mr. Nastich: That's right.

Mr. Renwick: That was the only point, an ~~alleviating~~ factor in the exchange situation.

Mr. Nastich: The only way, I think, Mr. Deans, that you can avoid exchange risk completely is if you invest your money in the United States and earn the money there. In other words, you buy something that is paying 9 or 10 per cent, then use that 9 or 10 per cent return in order to pay off your money. Mr. Allan's point is that you have an opportunity cost of coming back if the Canadian ~~dollar~~ dollar happens to be very weak or very strong.

Mr. Renwick: You could ~~bring it~~ bring it back here and...

Mr. Allan: You have an opportunity to make a profit in bringing it back, and it decreases your profit by the amount, so that really other than mechanics and the bank rate of exchange, it is about as simple as that, isn't it?

Mr. Chairman: It allows some flexibility, I suppose, it cushions ~~your timing~~ ^{your timing}.

H-2516-2

Mr. Nastich: You avoid spot fluctuations. Another point which we do is you hedge by going in the market today and, say, ~~buy~~ buy \$100,000 of American money at whatever the discount rate is and also sell \$100,000 worth of American money nine months or a year from now at what they call the hedge rate.

Mr. Shibley: I'm glad you put a period of time between. *We'd call that a wash.*

Mr. Nastich: *It's all swaps* ~~operates~~ in the financial business. *And that* way you have taken away your exchange ~~rate~~ *risk.* You've said, "All right, I know I am going to pay \$1 Canadian for \$1 American today, so I'll buy \$100,000". And nine months from now you make a delivery commitment for that same amount at that same rate. So that you know you are in good shape.

Mr. Allan: Well, to get to the kernel of the nut, it isn't any great financial advantage ~~in~~ in the fact that you have American income so far as paying this lease is concerned.

Mr. Nastich: Oh yes, I think it is, Mr. Allan.

Mr. Allan: Well, how much?

Mr. Nastich: It depends on your particular circumstances.

Mr. Allan: If you are paying it with American dollars that are at a premium, *Mr. Nastich: But you'd get interest rates. Mr. Allan:* if you could bring them home and get the premium.

Mr. Nastich: That's right, but you could also, for example, right now, I could get almost 11 per cent for short-term American money, we changed it just today, as opposed to 6½ per cent in Canada. In other words, the spread of interest rates is..

Mr. Allan: But that's unusual.

Mr. Nastich: Well, these are the kinds of things you can take advantage of.

Mr. Allan: But in your ordinary course of doing business I don't think this enters into it.

Mr. Nastich: You do have spreads, Mr. Allan, and ~~we~~ have in the last few years of 2 and 3 per cent.

Mr. Allan: I know you do, but after all, the principle of having American dollars that, if they are at a premium, they are at a premium to bring home, and if you have to pay this rent in American dollars and they are at a premium, it is going to cost

H-2516-3

(Mr. Allan)

the Hydro money.

Mr. Renwick: Mr. Chairman, with the greatest respect, I don't see that If you borrow US dollars you have to repay US dollars, and I understand ^{with} the exchange risk in that, ultimately all you can do is defer it. You have got to go back. But if you generate income in the United States in United States dollars you don't have to repay that to anybody, and ^{you're free to} ~~you're free to~~ use it for what you want to do, and Hydro is not in the game of making an exchange profit or loss. There business is to make a judgement of what the US liabilities are. If they can use those funds for the purpose of paying the rent, it seems to me that in a sense that is a very real hedge, ~~_____~~

~~_____~~ In other words, I don't think it is crucial to the problem that we are faced with in this committee that the funds originated in the ~~_____~~

H-2516-1 follows

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2517 - 1

3.15 - 3.20 pm
AA

(Mr. Renwick)

~~problem that we have faced in this committee that we have~~
~~experienced in the~~ United States as distinct from them being
all Canadian funds. I don't think there is any bad judge-
mental factor involved in that matter from the point of view
of the work of our committee.

Mr. Allan: Of course, I view it differently. I
view the American dollars - if they are at a premium, the
American dollar is worth \$1.05, we'll say, to bring home.
Well, if you pay your rent with those American dollars, you
have lost that five cents.

Mr. Chairman: Well, I think you are both right
in your understanding of the situation. The debate on the
merits, I think, can be carried on when Mr. Nastich is
not here.

Mr. Renwick: I ~~was~~^{was} hoping Mr. Nastich would ~~solve~~^{solve} it.

Mr. Chairman: But I think you are both right and
I ~~hope~~^{think} Mr. Nastich is agreeing ~~that~~ there is no misunderstanding.
It is a debate as to the proper way to proceed.

Mr. Shibley: Mr. Nastich, I have had produced
to you exhibit 63 and exhibit 61. Exhibit 63 is the first
documentary indication of your involvement with the project.
Were you earlier at all engaged in this project?

Mr. Nastich: When I ~~was~~^{was} director of property, I
became involved in a lease arrangement with the Bank of Montreal
building, which is on that same site, ~~otherwise~~ not.

Mr. Shibley: So that you arrive on the scene and
I take it that you are presented with certain documents to
look over and comment upon and you then issued this memorandum.

Mr. Nastich: No, the way it started, as I recollect,
Mr. Shibley, was that Ken Candy called me one day and said, "We have
been working on the proposals for the new building." He said,
"John Dean has been helping me partially and we are coming

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AA

(Mr. Nastich)

to the end and we would like to see if we could continue." I think John had stepped out of the picture for ~~wa~~ a while. So I ~~was~~ had a meeting with Frank Mink who worked for John Dean. The three of us got together and I pulled out Mr. Banks' file, which is all in exhibit here and looked over the background. ~~and~~ It occurred to me that the one thing that hadn't happened until now is to put all this stuff together. You know, there were letters from Mr. Dean to Mr. Sissons. There were various types of proposals. Mr. Cameron had had a letter. ~~and~~ I found it hard to grasp it all, even though it is in my business; so I said, "Look, as my letter says, we are coming to the final decisive stage, I think we should make sure that all alternatives have been looked and the cost implications reviewed."

Now, I had some bad experiences with the extra voltage line in the Beverley situation, where we found we hadn't put our case together ^{as} well. The case was there. We just hadn't substantiated it. So I wanted a brief put together. I used the lawyer's brief, which would put the whole situation in perspective.

I also came with a bias. I came with a bias of the public tender approach and I came with a bias towards looking at it in terms of financing it ourselves, ~~constructing~~ constructing it ourselves and maintaining it ourselves. That was the perspective from which I was coming. And I didn't find any disagreement from either of my employees or Mr. Candy subsequently to the idea of doing it. There are a lot of questions there about the already-prepared architectural drawings, the criteria. ~~Let~~

Mr. Shibley: Sure

Mr. Nastich: ~~Let~~ etc.

Mr. Shibley: Now, as part of the material that you have looked at, was the proposal of Canada Square, which is exhibit 61, part of that?

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(Mr. Nastich)

Mr. Nastich: No.

Mr. Shibley: You hadn't yet examined it?

Mr. Nastich: Mr. Shibley, to my surprise, I guess I have to say I didn't see any of the proposals at any time until this hearing started, that I worked from the April 10th report.

Mr. Shibley: I see.

Mr. Nastich: These proposals, I guess, were with Mr. Mink and Mr. Candy, but they were not something that I dealt with.

Mr. Shibley: So that, you, in effect, were issuing your various memoranda, urging further investigation and caution, etc., but without being personally involved in the preparation of any material, or personally involved in making any analysis of the transactions. Is that correct?

Mr. Nastich: That's right. I think if you ~~look~~ look, I had been on the job for some six weeks at that time and my treasurer was very ill and was away and had been away for some months, ^{and} so I was involved in the financing, ~~so~~ that is one reason I went to Japan. So I didn't go into the detail, and I normally wouldn't. ~~It's just not my way of~~
~~just not enough for me to~~

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B.G.

(Mr. Nastich)

~~...go into the detail, and I normally wouldn't do this just get my~~
My time is just not enough for me to look at the specific proposals. ^{I think}

Mr. Shibley: Well now, that meeting you talk of ^{I think} was on March 13th, was it? Because I have a diary note for you on that day. Had you received any direct^{tion} from Mr. Gathercole, who incidentally issued a memorandum on March 11 asking for the preparation of material as he intended to make a submission to the Premier and to the Cabinet?

Mr. Nastich: No, he didn't. I did receive a copy, Mr. Shibley, of the letter that he sent to Mr. Sissons.

Mr. Shibley: The memorandum, yes.

Mr. Nastich: The memorandum.

Mr. Shibley: That's that March 11th memo.

Mr. Nastich: Yes.

Mr. Shibley: Did this motivate you in issuing your own memorandum of March 23, ~~or was that~~, and your meeting of March 13?

Mr. Nastich: It was sort of coincident. I would have done this in any event.

Mr. Shibley: I see; so that it hadn't to do with Mr. Gathercole's directive.

Mr. ~~Nastich~~ Nastich: No, but it tied together; the two purposes could be served.

Mr. Shibley: Yes, you mention that you relied upon the April 10 memorandum, Exhibit 67; was that the ~~same~~ memorandum which formed the end result of your instructions? ~~and the instructions~~

Mr. Nastich: Yes, this is the product of this letter.

Mr. Shibley: Yes, of your memorandum of March 23.

Mr. Nastich: Yes.

Mr. Shibley: Is it also the product of what Mr. Gathercole had instructed be prepared by his ~~own~~ memorandum of March 11th?

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Mr. Nastich: I don't ^(?) quite see that.

Mr. Shibley: Well, in the sense that within that end ^{the} of organization which you were heading, having regard for the fact that Mr. Gathercole had issued his directive of March 11th to prepare a submission, was the ~~March~~ ^{April} 10 document intended to satisfy that requirement as well as the requirement of your memorandum?

Mr. Nastich: I would think it would, Mr. Shibley.

Mr. Shibley: Yes; ~~as~~ as you say, they happened to coincide. Is that correct?

Mr. Nastich: Yes.

Mr. Shibley: And the April 10 memorandum really was intended to satisfy both the directive of the Chairman and your own memorandum to Mr. Mink?

Mr. Nastich: Yes.

Mr. Shibley: All right. Now then you had looked at the proposal of Canada Square at this time.

Mr. Nastich: Yes.

Mr. Shibley: I would ask you to look at it with us for a moment, just to have the benefit of your comments, ^{with} particular reference to page 5 of the submission, ^{wherein} ~~where~~ it sets forth the financial arrangements proposed by Canada Square.

Mr. Genest: What exhibit number is that?

Mr. Shibley: That's Exhibit No. 61, January 24; and I ~~take it that~~ ^{that} from this submission it was not firm as to the cost of the money to Canada Square. Is that correct?

Mr. Nastich: I am reading here. It ~~says~~ says: "our tentative financing arrangements involve obtaining \$20 million in ~~Swiss~~ Swiss francs at an interest rate of 6 1/2 per cent per annum, and the balance in either U.S. or Canadian funds, at an interest rate of approximately 7 3/4 per cent. Is that what you're referring to?"

Mr. Shibley: Yes, that's right. But it says - "based upon these arrangements, the rental rate would be \$492,000. per year", and it goes on, "later on, if we are unable to borrow the required

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(Mr. Shibley)

funds at ~~the~~ these favourable rates, there will be ^a ~~pro~~ ~~rate~~ rate increase in the rental rate up to a maximum of 5 1/4."

Mr. Nastich: Yes, yes.

Mr. Shibley: So that as of the date of submission of the proposal, the ~~rate~~ rental rate was not firm.

Mr. Nastich: Yes.

Mr. Shibley: And that was because the cost of money was not firm.

Mr. Nastich: Yes.

Mr. Shibley: And in addition, the amount that was to be borrowed for the building was still an uncertain quantity. Is that correct?

Mr. Nastich: Well, it seems here that he was thinking of \$20 million in Swiss francs, which is a fairly large issue in Switzerland. That's the only part ~~that's~~ that's specific.

Mr. Shibley: Yes, but there's no indication in this submission as to whether they were going to spend \$40 million, \$45 million or \$50 million on the building.

Mr. Nastich: I don't think so.

Mr. Shibley: NO. Now then, just to ~~clear~~ clear it up while I am at this, ~~on~~ in that same page it references arrangements requiring co-operation to assist in this --

Mr. Genest: Mr. Shibley, are you sure you are right?

Mr. Shibley: I think so.

Mr. Genest: Because I don't see it as a so ci

(TApe H-2519 follows)

H-2519-1

~~Mr. Shelby: Indiana.~~

Mr. Nastich: On page 4 they mention, approximately \$34.00 per square foot.

Mr. Nastich: No.

Mr. Nastich: No.

Mr. Nastich: Yes, I did.

Mr. Nastich: No.

Mr. Nastich: Yes.

Mr. Shibley: There is reference in the memorandum to the effect of decentralization, the economic cost of geographic scatter, and you have prepared and have asked me to introduce ^{through} to you today a statement of what you calculate to be a comparison of the cost of present accommodation against the cost to be incurred in the new building and I ask that ~~you~~ it be made the next exhibit, Mr. Chairman.

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Mr. Chairman: Exhibit 235.

Mr. Shibley: I might say, Mr. Chairman, I only received this over the lunch hour and I haven't had time to examine it in any detail. I have been taken up with another matter raised with me by counsel for Hydro, but I would like to go through it with Mr. Nastich sort of spontaneously and unrehearsed.

Mr. Nastich: Yes.

Mr. Shibley: You set forth the cost of the present space at 620 University Avenue, and then you set out additional costs projected to 1985. Now, in terms of these additional costs, were these computed on a per annum increment basis?

Mr. Nastich: Yes.

Mr. Shibley: And you got escalation for taxes ~~at~~ ^{that's} at five per cent a year ~~self~~ ^{explanatory} increase in lighting, increase in existing rental - could you please explain that?

Mr. Nastich: This is assuming that in our ~~the~~ present accommodation with the staff increase of about three per cent a year, that we would be - I'm sorry, this is increase in existing rental costs based on 524,000 ~~square~~ ^{that} feet of rental space that we have now, and we assumed ~~that~~ ^{that} at 50 cents a square foot increase for every three years, that the extra cost from 1975 to 1985 would be \$790,000.

Mr. Shibley: Now, of course, if Hydro committed for, say, leases of a duration of ten years, would the average still work out as indicated in that figure? What I am wondering about, Mr. Nastich, is ~~that~~ the validity of an increment every three years, let us say the decision was taken not to build but to continue to lease, and last year there were leases renewed, the rate would be fixed, would it ~~not~~ ^{be} longer than three year ~~or~~ periods? But I am not sure whether this is a fair approach to it or not.

Mr. Nastich: ~~X~~ Leases normally have escalation factors in them.

Mr. Shibley: Not as to rent, as to maintenance ^{per se} ~~operation~~ and taxes, and so on, but not as to rent.

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Mr. Nastich: Let me check that with Mr. Lamb, may I?

Mr. Shibley: Sure.

Mr. Nastich: I think it is just an assumption that Mr. Lamb says we made. Our experience in the past has been that you never have a clear-cut decision that you are going to stay with your present accommodation, and I think the assumption here has been based on the fact that you have sort of an ad hoc situation. Except for the 78 Bloor Street building, most of our accommodation is on the same basis.

M

(Tape H-2520 follows)

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C.B.

(Mr. Nastich)

77 Bloor Street building, much of our accommodation is on a three-year, four-year, two-year basis.

Mr. Shibley: What I'm driving at though, is that if you had - you ~~are~~ are trying to make a comparison of rental against owning your own building, and if you are going to talk rental you should be talking rental on realistic terms. If you are going to decide to continue renting you would rent under leases of, say, 10 years. Isn't that so? Your counsel is upset about something, I'd say!

Mr. Chairman: Hansard can strike that out.

Mr. Shibley: I know a very prominent man that

Mr. Genest: ^{I'm sure that was} ~~The expression is~~ "fuddle-duddle"!

Mr. Shibley: Exactly.

Mr. Chairman: Mr. Shibley, the purpose of this exhibit,

I gather, is to show the urgency for Hydro to get into new accommodations
~~xxxxxxxxxxxx~~ isn't it?

Mr. Shibley: I don't think it is, I think it is intended to show...

Mr. Nastich: It is ~~is~~ intended to show the saving.

Mr. Shibley:the saving, but ~~was~~ just dealing with that first figure, it's unrealistic, isn't it, Mr. Nastich? If you are going to rent you don't take a three-year lease, you would take a 10-year lease and you wouldn't be confronted with increases every three years.

Mr. Nastich: Our experience hasn't been that we've been taking 10-year leases, Mr. Shibley.

Mr. Shibley: I realize that, but for comparative purposes...

Mr. Nastich: Yes.

Mr. Shibley: Really we should be talking about, ~~it~~ if you were going to take a 30-year lease, rather than build your

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(Mr. Shibley)

own building. What rate would you be required to pay on a straight rental deal? But what's bothering me about this item here is the frequency of adjustment, that's the only thing that concerns me, every three years. If you haven't any comment then I'll go on.

Mr. Nastich: I have ~~not~~ no comment, yes.

Mr. Shibley: Then the next item, ^{*}increased cost of operating 620 University Avenue, five per cent per year over a base of \$1.5 million. I don't quite understand how that close to \$1 million is made up.

Mr. Nastich: This is the assuming the increased cost of operating and maintenance costs of the existing 620 University Avenue; this is more janitorial space.

Mr. Shibley: For what period of time though? Five per cent of \$1.5 million is roughly \$75,000; you have got 990 in here.

Mr. Nastich: I'll have to check that with Mr. Lamb again. I'm sorry, Mr. Shibley, I only had this too, this morning.

Mr. Shibley: All right.

Mr. Nastich: It is the annual escalation of five per cent a year for 10 years. It is from 1975 to 1985.

Mr. Shibley: We may have to leave this for Mr. Lamb, I suppose. I'm ^{afraid I'm} having difficulty understanding that. But then you go on and you [^]got; additional lease space to accommodate 1,450 staff, ~~and~~ 203,000 square feet at \$10 per square foot. Now again, where do the factors entering into that computation come from?

Mr. Dears: Mr. Shibley, ~~now~~ ^{think your} I ~~make a~~ suggestion, ~~that~~ ^{is} very valid. Why don't we, rather than pursue and go back over it again, why don't we leave it for Mr. Lamb?

Mr. Shibley: I had hoped to avoid ~~calling~~ ^{calling} Mr. Lamb.

Mr. Nastich: I'm sorry about it.

Mr. Shibley: All right, we'll leave it then.

Mr. Deans: We could probably go through it very quickly with Mr. Lamb and it ~~may~~ may take quite a long time to do it with Mr. Nastich.

Mr. Shibley: Then returning to the exhibit, you've already commented upon external financing, ~~we~~ we won't get involved in the use of pension funds, I take it ~~it~~ it was never contemplated, from a very early date the decision was taken, you should not use pension funds, and you never indicated to Mr. Moog that you were willing to use pension funds.

Mr. Nastich: That's right.

Mr. Shibley: I want to go on to deal with the pro-rating that took place within this document, and that's really found — sorry — at page 30.

Mr. Nastich: ~~Admitted~~ Yes.

Mr. Shibley: I'd like you to comment, Mr. Nastich, without me leading you at all, as to your — I'd just like you to a comment on what has been called a pro-rating process that ~~was employed by~~

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(Mr. Shibley)

~~comment on what has been called a pro-rating process that~~
was employed by Messrs. Candy and Mink in this report.

Mr. Nastich: Yes, I would like to. There were two things that I was concerned about when I looked at this pro-rating. One was the actual method itself, that is, what are you doing when you're pro-rating in the mechanical sense; and, secondly, whether or not it was valid to use that method in terms of looking at different proposals.

Now, when Mr. Mink did this pro-rating, he made some assumptions which I would like to list. First of all, he said that building costs were all to be based on the specifications and that these building costs would include all costs related to the building, that is, including interim financing and design fees, and no overhead or profit was to be included. That is, when you said \$34 a square foot, you talked about the construction cost plus the architects' fees plus the design fees, but no overhead and profit, and interim financing. So that in that way you didn't have that variable of overhead and profit.

Mr. Chairman: The interim financing was it ~~in~~ ^{in, or -?}

Mr. Nastich: It was in. It would be, for example, in Canada Square's case, \$28-odd for the construction, four or five dollars for the interim financing, and a dollar or so for the fees.

There was another assumption, too, which was the disparity in building costs, that is the fact that you got somebody come in at \$28 and somebody come in at \$34 and it was the result of a misunderstanding of the quality aspect of the specifications. Somebody who came in at \$28 had for some reason not put in everything, and somebody who had come in at, say, \$37, had perhaps done too much. I am using a theoretical example.

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Then Mr. Mink worked from the basis that if that's the case, if the disparity is because of a misunderstanding and there is no overhead and profit and the man has to come to some level of specification, some quality level which you have in mind, then he has to finance that at his own interest rate. So let's take an example: Y & R came in at, say, \$28 a square foot, and we felt that the quality level should be \$30 a square foot. Since there is no profit and overhead in that, because he has covered that in his ~~rent~~ other side of his rental figure, then the extra \$2 has to be financed by him at whatever his interest rate is; it could be eight and one-eighths percent or eight and five-eighths per cent, whatever his interest rate is. So you come in and say, and I have an example here, if I can just read it to you very carefully.

At \$28, at this particular interest rate, the financing cost is \$2.52 and on top he has a maintenance cost, if you recollect, \$1.35, and his rental rate was ~~\$4.50~~ \$4.50. So when you add that all up you find there is a margin of 63 cents per square foot there. IN other words, ~~the~~ \$4.50, you subtract his financing cost at the ⁸28 is \$2.52, and you subtract his maintenance of \$1.35 and you are left with that margin.

So we look at that and say, ⁶we know we think we believe he should go to the \$34 level on this particular case." So he has to finance an extra \$6 to get himself to that \$34, and that extra financing cost ^{is} ~~him~~ 54 cents, and you add that to his rental and you say, "Instead of ~~the~~ \$4.50," which he could ^{to} for a \$28 per square foot building, "you now have to finance another 54 cents ~~financing~~ so the rental is \$5.04." That assumes that the maintenance cost has remained the same and his margin and his overhead have remained the same. And that is quite a conservative approach because you normally find that the builder will add a little more in his own calculations, and Ellis-Don did that when he moved from \$26,

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(Mr. Nastich)

or \$24 to \$26 to \$28; he did pro-rating but he also added to his margins because when we looked at his calculation and his interest rates, we found he was raising his rental by some amount larger than simply to pay for the financing.

Mr. Deans: Isn't there another way to do that?

Mr. Nastich: To do what, Mr. Deans?

Mr. Deans: To bring it up to the ^{\$}34. Couldn't you go back to the developer and tell him, ^{"We} think you've made a mistake, ^{you use} why don't you see whether or not ^{put} everything in and the quality is what we want?"

Mr. Nastich: Yes. I think there are three things here, Mr. Deans. I was trying ^{to} ~~the way~~ explain the method, because I think we have had the method. The second is the validity of trying to put everything on the same dollars per square foot, and the third one is the process you use in a pro-rating system. ~~There's three things~~

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5(Mr. Nastich)

~~There are three things; One is the actual calculation, which is what I was trying to deal with here first and get that out of the way. Because it is not a complicated calculation; it is a fairly simple theoretical approach, ingenious.~~ When I said it was ~~ingenious~~, that's what I meant. It's quite straightforward and simple. You are simply saying, if it is \$28 a square foot and you need to go to \$34, that extra six bucks has to be financed at that rate. You add that on and it gives you a basis for measurement. You have said the overheads stay the same and the maintenance stays the same. Now, is that valid --

Mr. Chairman: Mr. Nastich, the lower the man came in, the more he was penalized ^{for} the amount you would add on for financing.

Mr. Nastich: It depended on his financing rate.

Mr. Chairman: Well, let's ~~assume~~ ^{assume} they ~~are~~ ^{are} all on the same financing rate.

Mr. Nastich: They weren't.

Mr. Chairman: Well, what if they were all on the same financing rate? The lower they came in, the more you have penalized them by adding on interest.

Mr. Nastich: No, it would depend on his margin ~~and his~~ ~~margin~~ essentially and his maintenance costs because you would bring everybody up. We found, for example, —

Mr. Chairman: But you didn't give anybody any credit that way. You penalized them for having a low bid.

Mr. Nastich: No, Mr. MacBeth, I did a calculation on this for my own satisfaction and I said, supposing we pro-rated everybody to \$30 or we pro-rated everybody to ~~\$28~~ \$28, and that would mean that you bring the \$34 one down to ~~\$30~~ ^{\$30} and ~~\$28~~ ^{\$28}. You didn't change the relativities. In other words, ^{can} this pro-rating, as I recollect, the first order was Y and R was the lowest, Horizon was the second lowest, Canada Square was the third and Ellis-Don was the fourth and when we did the pro-rating, it ended up that Canada Square was the second lowest. Whichever dollar figure ~~you~~ you use for pro-rating, that relationship

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(Mr. Nastich),

from then on ~~it~~ remains the same.

Mr. Shibley: That's really not the premise upon which the pro-rating might prove invalid.

Mr. Nastich: No.

Mr. Shibley: Now, I would like you to comment on the validity of the process because in your memorandum of June 26, 1972, you did say, "I believe that our method of pro-rating up the capital costs of the building so as to eliminate the differences in the quality of the building is ~~ingenious~~ ingenious. Is it a valid approach in terms of actual building factors?" I would like you to explain that to me.

Mr. Nastich: Well, I was concerned when I looked at that. I saw ~~it~~ changed ~~relationships~~ the relationships. And I wanted to know, after I learned and understood the method, I wanted to see that what we were doing had some relationship to the building factors. Now, all through this, Mr. Shibley, there ^{was} ~~was~~ a firm foundation from which the ~~the~~ financial people were working, and that foundation was that the building we required for the quality level ~~and~~ I don't like using that word ~~but~~ with the features that we wanted was \$34 a square foot. You know, those specs were going to require you to go to \$34 a square foot.

Mr. Shibley: And just stopping you there, you were still working on the basis of Mr. Candy's understanding with Mr. Moog that the \$34 would include the three elements you have mentioned; namely, construction costs, design fees and interim financing.

Mr. Nastich: Very much so.

Mr. Shibley: And nothing else.

Mr. Nastich: Very much so.

Mr. Shibley: That was still the thinking right up ~~to~~ until the time of the commission decision on July 19th?

Mr. Nastich: Yes.

Mr. Shibley: All right.

Mr. Nastich: And I guess ~~we can prove~~ ^{even best} that, Mr. Shibley. We were working on a building cost and ~~not~~ ^{no} profit in it.

Mr. Shibley: Yes, so that on the basis of that being

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the content of the \$34, then did you consider the pro-rating to be a valid approach?

Mr. Nastich: I saw it as ^a ~~an~~ basis for trying to get from comparing apples and oranges and bananas to Spy apples and Delicious apples. It is an attempt—and I think if ~~we~~ we look at the report, you will find that Mink himself was very cautious about this. He says it's a simplistic approach--

Mr. Shibley: Yes.

Mr. Nastich: And he says it helps you but you may well have to make your selection on other factors, and I think that was critical in that assessment.

Mr. Shibley: Yes, but the point I am trying to make with you now, Mr. Nastich, is that without that understanding as to the content ~~of~~

→ (H-2523 to follow)

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(Mr. Shibley)

~~I think that was not intended as to the content~~ of what was to make up the \$34, construction, design, interim finance, no overhead, no profit, no royalties, no appraised value bit [#] without your then understanding, this whole method of pro-rating is ~~what?~~ ^{what?} Is it valid?

Mr. Nastich: Not if you have those other factors in it, because they are variables, they are variables on you. I ~~think~~ ^{thought} a lot about whether you could ever use what we call pro-rating ~~xxx~~ in any process, and I think you could if you related it much more closely to specific and detailed specifications - not plans and drawings - but that you could say against these specifications this builder, at \$28, has provided these at whatever quality level I can define, and some other developer has come in at \$30 with some other features which I can measure and say to myself, well maybe it is ~~it~~ worth two dollars. And again, that is an element of judgement, it is a way of trying to get some compensation. Now you could in the process say, and I think ~~it~~ legitimately, we should go back and talk to him.

Mr. Shibley: Well that is what I wanted to ask you, because the pro-rating presumes that Ellis-Don, or Y and R, or Horizon, for the price they had quoted, were not going to give you a building, equal in quality to that of Canada Square. It presumes that, doesn't it?

Mr. Nastich: Yes.

Mr. Shibley: And that presumption should never have been made without going back to those developers to ascertain exactly what they were prepared to give for the dollar cost that was part of their proposal. Do you agree with that?

Mr. Nastich: I think I do, yes.

Mr. Shibley: And that is the real difficulty. I shouldn't put it in those terms. That is the ~~the~~ real feeling of the people within Hydro respecting a comparison of these proposals, isn't it? The failure to follow up and get more precise information from each of the developers.

Mr. Nastich: I think, as I said, if you were thinking it over and doing it over again, you would do it the way you and I just said.

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(Mr. Nastich)

I think there was a feeling here that these people, and I certainly, in all my work here had assumed that the people had the appropriate time that this was a real competition, that this was an attempt to look at four developers, and that these four developers had given their best shot at it.

Mr. Shibley: That was assumed by you. Mr. Nastich: Yes.

Mr. Allan: But they didn't know what they were shooting at.

Mr. Nastich: Well you are outside my area of confidence, Mr. Allan, but I listened to Mr. Zwig, and I understood him to say the specs that he had which were oral, as I understand it ^{and} which he worked from were quite satisfactory. And after a day and a half in the office, and looking over and talking with Mr. Candy, he felt he could make a reasonable proposition. Am I right on that?

Mr. Allan: If that is so, ~~didn't he bid on~~wasn't his proposal based on the specifications?

Mr. Nastich: To his understanding, yes; as he understood the specs that he saw and he could make a bid on them. Now it is still possible that he could have not understood completely what Mr. Candy had in mind at a quality level. I don't know that. But I understand the logic of your point, Mr. Allan.

Mr. Shibley: Mr. Nastich, why should there have been a presumption in the mind of anyone within Hydro that those specifications would be differently interpreted by Canada Square on the one hand and the other developers who were putting in lower bids? That is Mr. Allan's point.

Mr. Genest: Mr. Chairman, I know that the committee is very interested in this, but I just put this. Can't you reach your own conclusion? You are putting Mr. Nastich in the position of passing judgement.

Mr. Chairman: I am agreeing with you Mr. Genest.

Mr. Genest: And I think that is placing him in a tough position. He can give you what he understood, and how he worked.

Mr. Allan: Isn't that though against a background of certain statements which he just made.

Mr. Shibley: Exactly.

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Mr. Chairman: Well I think he is making.

Mr. Genest: Oh no, I think on his statements, fire away. But when you come to ask ~~me~~ him to say 'Shouldn't he. Didn't you ~~and~~ ^{feel} this'

Mr. Allan: Well that is a part of the basis of the pro-rating.

Mr. Shibley: That's right.

Mr. Deans: Isn't it fair to say that at the time Mr. Hatch

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3.50 - 3.55 pm

2524 - 1

AA

(Mr. Deans)
~~Mr. Deans~~

~~Mr. Deans: I am in a bit of a quandry. At the time~~

~~you didn't feel anything, because you were dealing with what~~

~~information?~~
time, Mr. Nastich -- I am in a bit of a quandry. At the time
you didn't feel anything, because you were dealing with what
you imagined to be factual ~~information?~~

Mr. Shibley: Mr. Deans, let me remind you ~~that we~~
~~are~~ are adopting this witness as sort of the spokesman for --

Mr. Deans: I understand.

Mr. Shibley: ~~the~~ ~~financial~~ the financial wing of
Hydro.

Mr. Deans: I am not trying to -- let me say I am
not trying to get him off the hook, I am just simply saying --

Mr. Nastich: I didn't know I was on one!

Mr. Deans: No. No. But Mr. Genest was beginning
to feel ^{maybe} that you were getting on ^{I sensed} in his interjection and, I
think, quite fairly so. All I am saying is that Mr. Nastich
is now making his judgements, I suspect, based on what he
knows from having sat in his seat in the gallery from May
without missing a day or an hour or a minute, I think.

Mr. Allan: He wasn't always in the gallery.

Mr. Deans: Pretty close. Pretty close.

Mr. Shibley: I am kind of hoping, frankly, gentlemen,
that -- members of the committee ^{that}, that, with this witness
being, in my mind, a very frank and straightforward individual,
that we can very quickly get some answers that will help us
with our report and we won't have to go through an exercise
with other people from the financial department of Hydro.
And I just want to ask you, Mr. Nastich, having regard for
the fact that there was no follow-through -- you say yourself,
you presumed, when you read this report, that every developer
had had an opportunity to make his best shot.

Mr. Nastich: Yes.

September 17th, 1973

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AA

(Mr. Shibley)

Mr. Shibley: And by that, I take it, you mean that you felt there had been follow-through with each of the developers and that the terms, as for a comparison of the proposals, outlined in the April 10 report, was sort of the last word from each of the four developers.

Mr. Nastich: Yes, that they had had an opportunity.

Mr. Shibley: Yes. And whereas, in fact, you now know that that did not take place.

Mr. Nastich: I know the evidence, yes.

Mr. Shibley: And having regard for the lack of follow-through with the other three developers, is it feasible for Mr. Candy and Mr. Mink and anyone else who contributed to this pro-rating process to have relied upon it?

Mr. Chairman: I am going to interrupt there a little. I think that's a conclusion ^{this committee} should make. I am really sympathetic to Mr. Nastich's position. If he were Mr. Gathercole in regard to it, I might feel differently.

Mr. Shibley: Well, Mr. Chairman, I'm sorry, but I am put in the unenviable position ^{of} having, so to speak, agreed with Mr. Genest that we would use Mr. Nastich, in whom we both have confidence, to answer these questions and that I would avoid having to go down the line ^{of} Mr. Cowley, Mr. Mink and Mr. Lamb and Mr. Dean, who were responsible at the time.

Mr. Chairman: I am just thinking that the committee has the evidence to make its own decision on the matter, but if you think that

Mr. W. Hodgson: Mr. Chairman, I can't go along with Mr. Shibley's line of thinking either. Once they make a decision, I don't think they should be running back to the developers seeing whether they would change

Mr. Deans: That is not the point.

Mr. W. Hodgson: Well, it is one of the points.

(Mr. Deans)

Mr. Deans: No, but it isn't the crucial point at this time. In all respect, I am not arguing with you. That may well be true. I have never differed with Mr. Shibley throughout the hearing. I make this point to you. I ~~may~~ have not differed at any time, publicly at least, throughout the hearing. But I must say this; I am worried that we are going to ask Mr. Nastich, on the basis of the evidence, to come to conclusions which we, as a committee, should be coming to, and to ask for his opinion ^{of} the method pursued by other people within his own organization, to give an opinion on the basis of the evidence which has now been put before us, evidence which he did not have access to at the time he was reaching his own conclusions.

I don't know what arrangement was made between Mr. Shibley and Mr. Genest, and I, personally, would love to have Mr. Nastich's view of whether he thinks what Hydro did was right. But I ~~think~~ think, in all fairness, it might be wrong to ask him to state that view publicly before this committee because he would then be doing our work for us.

~~Concluded~~
Mr. W. Hodgson: If I could just finish my ~~...~~

Mr. Chairman: Mr. Hodgson.

Mr. W. Hodgson: ~~...~~ before Mr. Deans broke in and made his speech.

Mr. Deans: I am sorry I interrupted you.

Mr. W. Hodgson: I would like to refer to Mr. Allan, who is a man with great experience in letting public tenders. Why you never - once they are all in, once you select, you don't run back to the other tender^s and say, "Can you come up and do this or do something else?"

Mr. Allan: I don't think anyone would agree with that.

Mr. W. Hodgson: That you don't run back to them?

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AA

(Mr. Allan)

Mr. Allan: No, that you should run back to them.

Mr. W. Hodgson: No. No.

Mr. Allan: I don't think that was the question. ~~222~~

Mr. Chairman: After you have selected them - we are talking about previous to the selection. Mr. Allan, I think, wants to make a point there.

Mr. Allan: Mr. Chairman, I wonder if I could state my point of view?⁷ I would have to confess that I have been very concerned about the pro-rating and I don't think it was properly done. ~~Now~~, I would like to give MR. Nastich a chance to convince me that it was properly done. I am not trying to put him on a hook. I am trying to get him to convince me that I ~~was~~ wrong.

2525 - 1 follows

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3.55-4.00 pm
V.H.

~~Mr. Anson:~~

~~Mr. Anson: I am not trying to put him on a hook. I am not trying to put him on a hook. I am not trying to put him on a hook.~~

Mr. Shibley: I might say also that there will be comment on this by Mr. Anson-Cartwright, as Mr. Nastich knows, because Mr. Nastich met yesterday with Mr. Anson-Cartwright and knows what is coming in that regard. Perhaps the better part of the ~~game~~ let's approach it from Mr. Allan's point.

Mr. Chairman: Mr. Walker want s/to make a point first.

Mr. Walker: Just a ~~comment~~ ^{to follow} on Mr. Deans' comment. I don't often agree with Mr. Shibley, Mr. Chairman, but I do in this case.

Mr. Shibley: WE've come full circle.

Mr. Genest: Its about time!

Mr. Walker: However, I tend to think perhaps if we did ask Mr. Nastich to provide his opinion on it, it would be quite all right, rather than perhaps suggesting what the answers might be.

Mr. Chairman: Okay. That might be a better approach rather than ~~Mr.~~ Mr. Renwick

Mr. Renwick: I made a note at 3.45 pm so far as I was concerned, the point was made, and I personally don't feel any need for any other evidence. It seemed to me that the ~~main~~ crucial point was made. Mr. Nastich gave his answer to it and I share a sense of trepidation ~~about~~ about asking Mr. Nastich to pass judgment upon his colleagues in Hydro, which is really what is bothering me about it.

Mr. Chairman: I am happy to get all the facts from him, all the facts we can, but when it asks him to decide whether the Commission was right or wrong, I think that is an enviable position to put him in.

Mr. Deans 'on ~~incredible~~ ^{incredible}... I am not worried about who he thinks ~~the~~ the Commission was wrong -

Mr. Allan: I think —

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Mr. Chairman: Well, the system, all right. But the commission bought this at this point and you are asking him to say whether the commission should or should not have bought it.

Mr. Renwick: I am satisfied that the point has been made. Mr. Allan may not be but I feel

Mr. Chairman: Well, Mr. Shibley, if we have persuaded you to pass on -- I don't want to miss any facts, because ~~we~~ I agree with you that we are getting good clear evidence here, just to show how far behind the rest of them I am. Mr. Nastich, may I just ask you to review briefly for me, because I feel everybody else on the committee understands this but myself, ~~the man who~~ says the average price for the kind of building you want was \$34, but there was another man who could build that quality, the same building, because of his expertise and the fact that his drove laborers harder or whatever basis you want to put, put longer hours in ~~than~~ himself, for \$33 - how did your system give that man any credit for that?

Mr. Nastich: The pro-rating system under that basis doesn't give credit for ingenuity.

Mr. Chairman: That was the point I was trying to make. He's made a legitimate saving of \$1 per foot and you are going to penalize him by charging him interest on that \$1 per foot.

Mr. Nastich: Yes, the assumption I outlined was the disparity in building costs was not due to that. It was due to a misunderstanding of the specifications. As I suggested to you, the proposal system, it seems to me, is an attempt to take into account the ingenuity of individuals and if your specs are specific enough, then you can measure each of these developers against that spec and if I can use the word "pro-rate", you might pro-rate up or down and that's the first stage of saying, okay, we are close to what the apples are. To me, and I am not

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3.55-3.40 pm
V.H.

(Mr. Nastich)

an expert in this area, that seems to me to be the way in which you would try to compare like things and, at the same time, leaving the opportunity for the developer to be more efficient or more innovative or more imaginative. ~~the~~

~~the~~

~~the~~

H-2526 follows

Sept. 13/73

4 - 4:05 pm

C.B.

(Mr. Nastich)

~~The~~
~~pro-rating says, "You two came with different answers and~~
~~the reason is you didn't understand. One had a different~~
~~understanding of what he was to produce." Presumably under~~
~~standing, the specifications are detailed enough that~~
~~there is no possibility ~~of~~ or there is little possibility—~~
~~of understanding, you know, ^{that} you are asking for this type of~~
~~an airconditioning system and carpets, etc.~~

Mr. Chairman: Thank you. Mr. Allan, anything further?

Mr. Deans: Mr. Chairman, ~~that~~ may I ask, isn't
 it proper, though, to draw the conclusion that if you agree that
 they didn't understand, ^{with} which I don't necessarily agree, that
 you can't ^{long} ~~pro-rate~~ simply on that because you don't know
 what they didn't understand. In other words, you don't know in
 what areas of the building development they were in error. Therefore
 it could be that there are ~~some~~ small areas where they didn't
 understand, and therefore their substantial costs are ~~correct~~ ^{correct}, and
 it might ^{have been} in the areas, ^{of bills} so to speak.

Mr. Nastich: Yes.

Mr. Deans: ~~that~~ the misunderstanding took place, and that
 the building you would have received would have been substantially
 the building that you required and that subject to whatever adjustment
 you might have made you would have arrived at the final building
 complete with all of its gloss and glitter.

Mr. Nastich: It's utility. I think on page 30 of
 that April 10th memo, when it says "criteria for selection",
 at the middle of the page they say, "A measure of the quality
 of the ~~best~~ building relative to the rental rate could be
 used as a simplistic criteria preference. Using cost per
 square foot as a measure of quality of the building, we could
 expect comparative values of the proposals would be as follows."

I think that's the crux of what this pro-rating is doing.

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C.B.

(Mr. Nastich)

You are saying that the quality of the building is directly related to the cost per square foot. You've been saying, and Mr. MacBeth's been saying, that maybe that relationship isn't linear.

Mr. Shibley: I'll pass on to another subject. Would you return to page 13 of the April 10 memorandum where I'd like...

Mr. Genest: Mr. Shibley, could I just put a question?

Mr. Shibley: Sure.

Mr. Genest: Which I think may

Mr. Chairman: Mr. Genest.

Mr. Genest: ^{On the} ~~the~~ area of misunderstand that the builders misunderstood, could I put it to Mr. Nastich that another way of looking at it is that Mr. Candy did not believe, and that's the assumption the financial people worked on, Mr. Candy did not believe that anybody could build to the quality required without spending \$34 per square foot. Would the witness agree with that?

Mr. Nastich: Yes.

Mr. Shibley: I'm concerned to have you reconfirm, however, that everybody's understanding, including Candy's and yours and the Commissioners, was that cost at \$34 only contained those three elements.

Mr. Nastich: Yes, no doubt on that, Mr. Shibley.

Mr. Shibley: Let's go back to page...

Mr. W. Hodgson: Just a moment, ^{then} ~~to~~ your understanding was that all the developers were told that they wanted a building of \$34 per square foot?

Mr. Deans: No.

Mr. Renwick: NO, that is the very problem.

Mr. Shibley: That's the problem. We know that evidence. Let's got to page 13; even I want to get off the topic. I want to look at the lease-purchase agreement and it says "Several reasons would appear to make this attractive financing. The

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4 - 4:05 pm
C.B.

(Mr. Shibley)

sources of capital would likely be foreign, ~~not~~ ^{not} dilute our conventional capital sources." You've covered that.

Second, "the tax advantages available to the developer could have a net effect, lowering the financing cost, to the developer. By retaining ownership, the developer takes advantage of capital cost allowances that would normally not be available to Hydro."

Now would you explain that please?

Mr. Renwick: Which page is this?

Mr. Shibley: Page 13, item 2, at the bottom of the page.

Mr. Renwick: Thank you

Mr. Nastich: I think just to finish that, Mr. Shibley, ~~my~~ ^{of this} answer would have to go....

Mr. Shibley: All right. "The effect ~~on~~ ^{of this} on the agreed annual rental rate would depend on the specific circumstances of the developer, his willingness to negotiate mutual benefits and his prospects of tax deferrals."

Mr. Nastich: Yes.

Mr. Shibley: Now what does all that mean?

Mr. Nastich: What it means is that by retaining ownership the developer can take advantage of some tax benefits which would enable him to defer his taxes, ^t that he can charge some of his depreciation costs against other income.

Mr. Shibley: So that — I'm sorry, you go on.

Mr. Nastich: This meant that you would have, I think, a variable situation with your developers because each one would have a different tax advantage, but ~~that~~ it would be assumed that all of them would have tax advantages.

Mr. Shibley: I might tell you to the extent of the three developers other than Canada Square who provided their files, the calculations included in these files ~~are~~ ^{were predicated on}

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4:05 - 4:10 p.m.
B.G.

(Mr. Shibley)

~~Canada Square, who provided their files. The calculations~~
included in those files all were predicated on them taking capital cost allowance. We haven't any similar material from Canada Square because they did not compute their figures. But this was to be a negotiating factor, I take it, in Hydro's dealing with a developer, that the developer would have the benefit of taking capital cost allowance.

Mr. Nastich: Yes, this was in this memo and I recollect that Mr. Dean had ~~repeated~~ mentioned it in his memos of October, well, in 1971.

Mr. Shibley: Yes, actually ~~he~~ there was another memorandum of his which is Exhibit 79 and because this is a matter of some import, I want you to deal with it there again. In Exhibit 79, on July 6, 1972 -- this, incidentally, was a memorandum done by Mr. Dean in the interim between the two Commission meetings, when they met on the 29th, met again on the 12th and they said they wanted some further review done.

Mr. Nastich: Yes.

Mr. Shibley: And as part of this material, there is a summary of position, and appendix which runs to one, two, three, four pages, and then it goes on -- there is a further appendix, "Validity of Cost and Profit Margins", page 2 of that. Would you find it?

Mr. Nastich: Yes. I'll --

Mr. Shibley: It's well on into the document, as a matter of fact --

Mr. Nastich: I have it, what page? Page two?

Mr. Shibley: Page 2 of the summary.

Mr. Nastich: It's the fifth page from the end.

Mr. Shibley: "Validity of Cost and Profit Margins," fifth page from the back of the document, right.

Mr. Genest: What's the exhibit number again? I'm sorry.

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B.G.

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Mr. Shibley: Exhibit no. -

Arch. number: 79, isn't it?

Mr. Shibley: 79.

Mr. Genest: Okay, I got it here.

Mr. Shibley: And you will notice it sets forth, Mr.

Nastich -

Mr. Renwick: What does it say, Mr. Shibley?

Mr. Shibley: It starts off "profit incentive." The document itself is "Validity of Cost and Profit ~~and Profit~~ Margins," and on page 2, it is talking about profit incentive. This is profit incentive to the ~~developer~~ developer, is that correct?

Mr. Nastich: Yes.

Mr. Shibley: I would like everyone to have this, because as I say, I think it's a matter of importance. Now, here Mr. Dean is outlining in a memorandum to you on July 6th, and this is the material that was relied upon by the Commission, I take it, when it met on the 12th, and again in part on the 19th. Is that correct? It's part of the material.

Mr. Nastich: I assume so, I don't ~~know~~ know, I was at neither meeting.

Mr. Shibley: Yes, and I notice, you are talking about what the ~~developer~~ ^(a) developer gets. ^(a) He could not only recover his original investment in land on obtaining long-term financing, but he may also take an immediate cash profit... (b) He obtains a very significant cash flow, if projected rates are obtained, which includes a profit margin. ^(b) Profit margin realized on a very ~~minimal~~ minimal investment, which depends on the degree to which he is successful in achieving (a) above," And so on. And then it says: "In any case, it is usually calculated on ~~the~~ being about 10 per cent of the theoretical equity investment (defined as being the difference between long-term financing and building value) This would also be calculated after ^{about} 5 per cent allowance.".

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B.G.

(Mr. Shibley)

And then: "c) The capital cost allowance for tax purposes is likely to give a substantial margin above the amount being retired annually off the ~~long~~ long-term financing, thus deferring taxes on profits for a considerable period." And: "d) Finally, he ends up as owner of the building free of debt."

But ^{it's} ~~is~~ the capital cost allowance again was presumed as part of the assessment by Hydro of the submission by the ~~development~~ developers, that the developers would be looking to that as one element in their profit. Is that correct?

Mr. Nastich: I think ^{yes}, I think, Mr. Shibley, he was talking about a standard type of developer here. When he was talking validity of ~~cost~~ costs and profit margins, as you see, he was talking about the fact that he would not only recover his original investment in land, but could take a profit. So I think he was saying, "Here is the type of advantage that a developer who owns the land can make." He has got the asset. ^{He owns the asset.} This is not a lease-purchase deal, this is a developer - I'm sorry -

Mr. Shibley: Then the return ^{yes,} ~~-~~ I'm sorry - relating it to Exhibit ~~67~~ ⁶⁷ however, these were all developer proposals, where the land remains owned by Hydro, and again it talks at page 13 of the tax advantages to the developer, respecting capital cost allowance.

Mr. Nastich: Yes.

Mr. Shibley: And as I say, ~~I think~~ I'm sure I'm correct on this, the material in all three ~~developers~~ ^{we didn't get any} from Canada Square but the ones in the other.

(Tape H-2528 follows)

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B.A.

H-2528-1

(Mr. Shibley)

~~I am sure I am correct in this, the material in all three~~
developers. We did didn't get any from Canada Square, but the
the ones from the other three all show that they were expecting
to take ~~the~~ ^{Capital} cost allowance.

Mr. Genest: Mr. Shibley, you may have left unwittingly a
misleading impression. The profit incentive section of Mr. Dean's
report, Exhibit ~~1~~.

Mr. Shibley: I'm sorry, I am working very quickly.

Mr. Chairman: 79.

Mr. Genest: 79. I think that what Mr. Dean is talking
about there is not this deal; it is the normal deal. It is the
sort of the lease-back deal.

Mr. Shibley: Which is the November one that you were
talking about, Mr. Nastich? Do you remember the date of that?

Mr. Nastich: October, I think, 1971. October 21, maybe.
That was the material that I saw when I took the job, and there ~~were~~
~~was~~ Mr. Dean's comments. I think this memo, Mr. Shibley, is in
part an updating of that October memo, I think he refers to that.

Mr. Shibley: Yes. So ~~that~~ that we can rely upon the *April 10*

Mr. Nastich: October 21st.

Mr. Shibley: Yes. It is to the same effect.

So now, basically, these proposals, therefore, were being
evaluated on the basis that the developer was not to get an
overhead allowance nor a profit allowance.

Mr. Nastich: In the cost of the building.

Mr. Shibley: In the cost of the building. His benefits
were to be obtained otherwise.

Mr. B. Nastich: ~~IN~~ the rental.

M(r) Shibley: In the rental. And also on capital cost
allowance. Is that correct? Those were to be the two elements of
benefit to the developer.

Mr. Nastich: I think in the analysis that we made, we
assumed that he would know his own capital cost allowance situation.

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B.A.

H-2528-2

(Mr. Nastich)

and that we would be saying, "here is the rental, you have to build this building without a profit in it, and whatever you want to do on the other side, on the maintenance costs and your overheads and your capital cost allowances, that is where your ingenuity comes in".

Mr. Shibley: Right. As you say, it is up to him to get -- ~~get~~ his profit was intended to come out of the rental and capital cost allowance. Those were the two headings of benefit to him. Is that correct?

Mr. Nastich: To break it down a little further, he could probably make, or should be able to make a margin on the maintenance, perhaps as well, as I see it. I look at that table in here, where you have the construction cost of the building, which is dollars of cost, and ~~on~~ on the other side, you have his rental rate, which is made up of the financing cost, the maintenance cost and his overheads, and ~~he~~ ~~can~~ establish his rental with those three factors taking a look, at I understand it, ~~at~~ at his capital cost allowance situation, if he had one.

Mr. Allan: I wonder if I could just clear with Mr. Nastich just who he means when he says "we".

Mr. Nastich: At the time I was looking at this report on April 10, Mr. Mink, Mr. Dean, Mr. Candy and I all had that understanding that we were talking about costs, ~~when~~ we said \$34.00 cost, cost of construction, interim financing, design fees.

Mr. Allan: ~~His~~ ~~proposal~~ would have resolved a lot of problems, wouldn't it, if ~~we~~ had carried it out on that basis.

Mr. Nastich: Yes.

Mr. B. G. Hodgson: Isn't it true that a ~~capital cost~~ ^{Capital cost}

tax position is unique to each company, ~~it~~ ^{it} is not necessarily ~~what you~~ ^{presume} ~~because it is~~ ^{because it is}

Mr. Nastich: It is not only -- I am not an expert on this but it seems to me it is unique to each developer and it may well be affected by the type of deal that we now have. This high credit

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B.A.

(Mr. Nastich)

These may have some serious implications ~~from~~ from a capital cost allowance basis. The advice I have been getting says that there is considerable doubt that you could say capital cost allowances is available ~~in~~ on this particular type of deal. Now, I am not an expert. I am taking secondary ~~in~~ advice on that, Mr. Shibley.

Mr. Shibley: I realize that. On the other hand, in respect to the transaction with Canada Square, it was necessarily predicated on them realizing that kind of a benefit, because the deal was predicated upon them realizing no overhead and no profit, so the only way they were going to benefit was what was left, if anything, out of the maintenance costs, of \$1.45, and the capital cost allowance.

Mr. Nastich: Well, I don't know that I would make that assumption. I think there was another area that Canada Square saw, and one of the other developers, was the commercial ~~area~~ area. That was another area of profit for him, which, as you know, is fairly variable, ^{and} is very sensitive to changes.

~~Mr. Shibley: Well, while you realize that as a subject you would have produced to you your own estimated~~

(Tape H-2529 follows)

H-2529-1

Mr. Shibley: While you raise that as a subject I would like to have produced to you your own estimate. Again, you have prepared this document and have asked me to introduce it.

Mr. Genest: I'm sorry, I'm not trying to delay the hearing. Before you leave the subject of capital cost allowance, I think there is certainly a misunderstanding in my mind, and perhaps in the minds of the committee, as to whether that is a factor that is expected to be taken into account by the developer in submitting his proposal, or whether that is to be negotiated after, ⁶because I think we have different views on that.

Mr. Shibley: I think, Mr. Genest, I can tell you that each of the files of the three developers who made submissions and included with their files their calculations, ~~which~~

Mr. Genest: I appreciate that.

Mr. Shibley: ~~In~~ ⁱⁿ every one of those cases there were computations based on capital cost allowance being taken.

Mr. Genest: I appreciate that.

Mr. Shibley: Now Canada Square's file didn't contain... you know that, don't you, Mr. Nastich.

Mr. Nastich: Yes.

Mr. Shibley: And I can't presume on anything because we don't have anything from Canada Square's file in the way of computations. But when you say, "Were they or were they not," in the case of the three we know about they were based on capital cost amounts being allowed them.

Mr. Nastich: Yes, I agree, and I think Mr. Genest is saying ~~that~~ ^{that's} when you include the capital cost allowance.

Mr. Shibley: Right.

Mr. Nastich: ~~It's~~ ^{that's when you} let the ingenuity of the developer in each particular circumstance...

Mr. Shibley: Exactly.

Mr. Allan: That's completely his, isn't it?

Mr. Genest: That's right. That's the point.

Mr. Allan: It doesn't affect Hydro.

Mr. Shibley: No, no. That's right. You have prepared and given me today a document called "Estimated Annual Cash Flow"

H-2529-2

(Mr. Shibley)

and it points up ~~the~~ ^{that} the importance, I think, of the commercial area, so we have asked that ~~be~~ made the next exhibit.

Mr. Nastich: I can do better on this one because I had something to do with it.

Mr. Chairman: Exhibit No. 236.

Mr. Shibley: Mr. Nastich, would you please review this with me. The assumptions are set out that "costs and floor areas as in Agreement unless otherwise indicated. (b) No profit on building construction. (c) Appraised value at least \$44.4 million."

Now ~~we~~ just stopping with items (b) and (c). I gather that it is respecting these two items that difficulty emanates from, ~~the~~ first of all, lack of information provided as to cost of ~~any~~ construction. You are dependent now on Fanscomb Roy. Is that right?

Mr. Nastich: And the appraisal.

Mr. Shibley: And secondly the appraisal. The Appraisal could affect a building construction profit to the developer ^{because} instead of using the intent or incorporating words which would define cost as per Mr. Candy and Mr. Moog's agreement, when the commission approved the deal, the words "appraised value" have now been used.

Mr. Nastich: Yes.

Mr. Shibley: And because "appraised value" have been used, there is now available to this developer a contingency of a profit on construction of the building. Is that correct?

Mr. Nastich: Yes, and a loss.

Mr. Shibley: And a loss; yes, I agree it could go either way. So that the basic approach to the pro-rating now was lost. Immediately they changed the wording from "cost" to "appraised value."

Mr. Nastich: Yes.

Mr. Shibley: Yes. And the next thing that happened as a result of the change of wording was it permits the developer when the appraisal is being undertaken to claim for overhead. Right? And for profit? And for royalties and all the things that you heard talked about when the various witnesses were in the box?

H-2529-3

Mr. Finlayson: Overhead is not a profit.

Mr. Shibley: I beg your pardon? No, no, I didn't say it was. I said "^{least}over and profit." Right.

Mr. Nastich: Yes. I heard discussion about the royalties, Mr. Shibley, and I think that is probably a matter of debate. But certainly we did agree here that there was a builder's profit which would build into the appraisal of the building.

Mr. Shibley: All right, Mr. Nastich, let's go on with the exhibits, so we understand it.

Mr. Nastich: May I just explain, sir, why on (b) and (c) we do too that. It gets very complicated in terms of making ~~any sort of a~~
~~profit assumption in terms of how much do you think there will~~
~~be in terms of a builder's profit or loss, or appraisal loss or profit~~

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(Mr. Naftich)

any sort of ^aprofit assumption in trying to say, how much do you think there will be in terms of building profit or loss or appraisal loss or profit, because it gives you two alternatives for every case. So we took the simplest one here to give us a benchmark.

Then the next part says, "Cash flow excluding commercial rents" and the first two items "Revenue" and "Costs" are straight from the agreement, that is the building lease says that 1,124,500 square feet times \$4.84 per square foot will provide a revenue of ~~1,124,500~~ \$5,442,500 to Canada Square.

The recessed area allowance is \$25,000 which gives that total revenue of \$5.467 million. His costs, again from the agreement, financing costs, were as you will note in a different area, 1,208,000 square feet times \$3.24 per square foot and this \$3.24 is the precise calculation for ~~amortizing~~ ^{amortizing} \$45 million at eight per cent over ~~three~~ ^{three} years.

The net revenue he has for management, maintenance and profit is \$1,554,000. Now we come to an estimate. At this stage, we are making a judgment. No where in the agreement does \$1.45 per square foot appear. That's the cost figure that was given to us in the Canada Square proposal and for the purposes of our estimate here, we are saying that \$1.45 is a ~~very~~ maintenance cost that has no profit in it, and its 1,124,000 feet and you will see a figure of \$1.63 million.

So, in total, taking the building as without the commercial area, there is a net loss of \$76,435 per year. That is assuming that the \$1.45 is the cost of maintenance and that's the only assumption that's built in there.

Now, what we try to do is to take the commercial area separately to show you how sensitive it is to changes in the rental rate. In other words, the commercial area,

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as has been explained to you, can either be a very profitable source to the Hydro and to Canada Square or it can be a serious loss to Canada Square, and the above calculation, as I say, ignores the potential revenue which will compensate Canada Square for the effective \$6.00 per square foot cost of this space.

Now on the next page, and it is less complex than it looks, what I tried to do here was to show you what the profit picture looks like. ~~On~~ ^{On the} immediate left, no revenue to Canada Square for the ground floor or the mezzanine. You will see it says "ground floor rent" and that's 24,000 square feet there, ~~and~~ ^{The} mezzanine concourse is 59,500 square feet which makes up the 83,000 for commercial. We assumed in column one that there was zero rent for the ground floor, zero rent for the concourse, ~~and~~ ^{for the} the next alternative, \$6.00 rent for the ground floor, still nothing for the mezzanine and then \$3, ~~\$6 and \$6, \$10 and \$3,~~ ^{\$3, \$6 and \$6, \$10 and \$3,} and finally raising to a figure of \$15 per square foot for the ground floor, and \$8 for the mezzanine and concourse, and as we note, we share in that profit. So what we are trying to do is give you a range of profit figures under these assumptions. So we show ~~that~~ the commercial revenue when you have zero rent, you get no rent at all, no dollars, \$144,000, which is simply multiplying the square feet by that rental figure, working up to the highest figure with these assumptions, ^{of} \$776,500 of revenue. Then we show the maintenance costs here for that area as \$1.45, and as you recollect, there is a ground floor payment of \$40,000 on top of that.

Mr. Allan: Isn't that half of 40 or 25, whichever is the lesser?

Mr. Nastich: No, I think it is pro-rated to the amount of area that is rented. In other words, if we rent half the area, we get $\frac{1}{2}$ 20,000 and we made the assumption that the whole area is rented at this rental figure. So it's a flat $\frac{1}{2}$ 40,000. So the total there comes from zero up to

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(Mr. Nastich)

\$161,000 per year. The net commercial revenue ~~is~~^{is} as
you see from—I will use the lowest of \$6—^{\$}69,000 to
\$ 615,000, which is the high level. And then the total building
cash flow, starting off with

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(Mr. Nastich)

~~1,615,000 which is a high level and then the total building cash flow~~
~~on an off peak~~ that \$76,000 deficit, you can see as you move up,
 you work from a ~~low~~ profit of, say, \$7,000 with a certain rental, up
 \$538,990, or in cents per square foot, fluctuating from a loss of
 six cents to a profit of 47 cents a square foot.

Now, in all these calculations, you have to make
 assumptions which aren't realistic. For example, it is likely that
 in the early stages the rental rates will be lower, ~~and~~ ^{then} they will go
 up in the latter stages, ~~and~~ ^{we} have assumed that as of day one ~~and~~
~~now~~ I think even Mr. Cartwright has that problem with his computer
 programme, ~~how does he~~ ^{how does he} spread ^{it} through the 30-year period, ~~so~~ ^{so} he has to
 assume a flat figure and the risk here in actual fact is that if you
 don't rent it in the early stages, ~~the~~ ^{you're} picking up ^a ~~deficit~~ deficit
~~and~~ which you have to recover in the later years and the present value
 of that is very, very heavy. ^{So} that the risks of not renting early in
 your period are more expensive to you than the risks of not renting it
 a long time in the future, so from Hydro's point of view it means --

Mr. R. G. Hodgson: It means you have got a good tax
 position.

Mr. Shibley: Well, the other thing is, the bank space
 is already taken up, is ~~the~~ it not?

Mr. Nastich: I don't know that, Mr. Shibley. I don't
 know that all of it would be taken up. I think the ~~the~~ Bank of Montreal
 is indicating an interest. Now, whether they would take all of
 the 24,000 square feet, I would doubt that.

Mr. Shibley: I don't think they would, but that's right.
 They were going to take up some portion of the bank.

Mr. Genest: Their former area was 4,500 square feet.

MR. Shibley: Yes, so that's a beginning on commercial
 revenue, ^{so} what you are indicating here of ~~course~~ ^{course}, is that subject
 to the fluctuation in revenues from the commercial area, which could
 result from (a) the vacancy rate and (b) the rental rate, the range
 of ~~the~~ cash flow can be from a deficit all the way up to ~~half~~ ^{half} half a
 million a year.

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Mr. Nastich: Yes, and it could be even higher than that, you know, as time goes on. I think 30 years from now it, it could be even higher, but I was really trying to put in perspective here -

Mr. Shibley: I understand.

Mr. Nastich: And, for example, a guess that you might say is reasonable is \$6 and \$6 which comes to 22 cents a square foot, and without getting into detail, I think Mr. Cartwright tends to have somewhat the same range of assumptions ~~in~~ this area.

Mr. Shibley: Yes, I don't think the figures vary.

Mr. Nastich: Now, this is pre-tax. We have assumed ~~that~~ because of the complications no tax is involved here. *If there is,* that changes the situation. We are working pre-tax here.

Mr. Shibley: Do you want to go to the next page?

Mr. Nastich: Yes, the next page is an attempt to ~~make~~ make a clarification of this \$4.84 and \$4.92 that we have been banging around here. The original proposal by Canada Square was that the rent will be \$4.92 for 1,208,000 square feet, for which they would receive money, and they would pay Ontario Hydro \$6 for 83,500 square feet of commercial area. ^{As} it says here: "In the agreement we wanted to avoid ~~any~~ unnecessary payments and credits, so we tried to get a net effect." So we said, ^{As} let's look at it that we will pay \$1,208,000 times ~~\$4.92~~ \$4.92 which is that many million dollars, \$5.0 million, and we will get back 83,500 times \$6 which is \$501,000. ~~Subs~~ Subtract that and you end up with ~~\$501,000~~ 1,124,000 square ~~feet~~ feet and \$5.4 million. Divide one in the other and you get \$4.84⁷¹ and that is what appears in the agreement. There's no \$4.92 in the agreement at all. It is \$4.84 and 1,124,000 square feet, and that takes in the payment of \$6 per square foot for the commercial area.

Mr. Allan: But ~~it~~ it also, so far as payments are concerned, Hydro instead of paying some of their money to Canada Square, you are paying it to the city of Toronto in taxes?

Mr. Nastich: Oh, yes.

Mr. Allan: You assume the taxes on all that \$6 area?

Mr. Nastich: Oh, yes.

Mr. Shibley: And the power too.

Mr. Nastich: Yes.

Mr. Allan: And the power?

Mr. Nastich: Yes.

Mr. Allan: So that in reality you get practically no premium except the possibility of a split in the rents above \$6.

Mr. Nastich: Yes, he's paying us \$6, which is the cost of financing, maintenance and taxes.

Mr. Shibley: Have you covered that ~~document~~ document to your satisfaction?

Mr. Nastich: Yes.

Mr. R. G. Hodgson: There seems to be some *I wonder if we could get a reflection*
~~disagreement~~ disagreement on the background. *They* seem to be in total
~~disagreement with the facts~~ *it would be*

Mr. Genest: I don't think ~~there~~ the power in the
~~commercial~~ commercial area, *as somebody interjected.*

Mr. Shibley: All right, power except for the commercial area.

→ (H-2532 to follow)

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C.B.

~~Mr. Shibley: Hydro is not supposed to give away~~~~hydro power, as I understand it. There is a disagreement in the background I understand if~~
~~and there seems to be a total disagreement.~~~~Mr. Shibley: I don't think it would include the power~~
~~in the background area.~~~~Mr. Shibley: All right, power, except for the commercial~~
~~area.~~

Mr. Chairman: Hydro ^{is} is not supposed to give away
hydro power, as I understand it.

^W
~~Mr. Shibley~~ ^W ~~Hodgson~~: Taxes, all the developers ^{know Hydro had} agreed
to pay the taxes.

Mr. Shibley: No, no Hydro pays the taxes.

^W
~~Mr. Shibley~~ ^W ~~Hodgson~~: ^{Not in right} Hydro pays the taxes ^{and} ~~to~~ all the
developers.

Mr. Shibley: Now there is one element that isn't in
your documentation, Mr. Nastich. It was in a work-up document
that I don't want to introduce. Mr. Genest mistakenly gave me
a ^{batch} ~~hand~~ of things and I've agreed not to tender them as an
exhibit. I didn't agree but I'm not going to tender them. But
there is one figure in one of them that I'm interested in. It
is the May 3rd, 1973 material, ~~and~~ there was a computation made
of interim financing costs of \$4 million on this project, just
when you yourselves were estimating costs to the developer. Is
that correct? It's the very last page of that material that ~~was~~

Mr. Nastich: I don't have that.

Mr. Shibley: It may be a separate document.

~~Mr. Genest~~ ^{A member}: Who gave it to you?

Mr. Shibley: Anyway ~~it~~ - never mind. It was a computation and an estimate only of interim financing costs. I've referenced this once before, which is why I was anxious, ~~it~~ it is \$20 million at 10 per cent per annum, average over 2 years \$4 million. Does that ring a bell with you?

Mr. Nastich: I remember the figure, but Mr. Genest told me you were going to ask about this, but he didn't give me the ~~answer~~.

Mr. Shibley: Mr. Genest will be relieved to know that I've now decided I'm not going to ask you anything but the one question I've just asked you.

Mr. Genest: That saves a great fight. That's the last ~~draw~~ ~~draw~~ you would have heard ~~of~~.

Mr. Nastich: I can't answer that, ~~Mr.~~ Shibley, until I see it.

Mr. Shibley: I'm not going to pursue it. I just tried to get a figure.

Mr. Renwick: Mr. Chairman, couldn't we have a recess for a few minutes.

Mr. Chairman: Well I was wondering how close you are to finishing with Mr. Nastich.

Mr. Shibley: Oh, I think we'll need a recess.

Mr. Chairman: ~~Now~~ is a good time to take it.

The committee recessed briefly at 4:32 o'clock, p.m.

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4.50 - 4.55 pm

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AA

THE COMMITTEE RESUMED AT 4:50 O'clock, pm.

Mr. Shibley: Mr. Nastich, I want to take you to exhibit 102, which is dated November 6th. This is a memo of a commission meeting.

Mr. Nastich: Yes. This is a general managers' committee meeting.

Mr. Shibley: I am sorry. Thank you. First, I note the date, November 6th, 1972, and this is at a point of time when, if the contract is not already concluded, it's in the process of being concluded, in the formal sense of execution and delivery of all the documents.

Mr. Nastich: November 1st, is really, as far as I am concerned, was when the final commission decision was made.

Mr. Shibley: In that connection, I might tell you, what's bothering me about that date, I think I have now discovered it, it's 117, an exhibit - yes, 117, November 27th, 1972. It is a memorandum to to Miss Vest, and in paragraph two it says, "As you are aware, there exists an understanding between Ontario Hydro and Canada Square to the effect that if the appraised value of the building is below \$44.4 million, then there will be a reduction in the rental payable under the building lease." I have been informed that there is now being prepared a letter of understanding between Ontario Hydro and Canada Square to cover this possibility."

That's what is causing me some doubt as to the time of completion of the execution and delivery of all of the documentation and, particularly, this one, which, even though in a separate-letter agreement, I consider to be one of the most corent terms of the overall agreement as between Canada Square and Hydro. Now, in light of that memorandum, I am still left in some doubt in my mind, frankly, notwithstanding the Easson affidavit, etc., and I am not imputing anything in this.

Mr. Nastich: Yes.

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AA

(Mr. Shibley)

Mr. Shibley: ~~as~~ as I have indicated, but I am concerned that a memorandum of November 27th is one ^{it says to} ~~be in Miss [unclear]~~, "There is now being prepared a letter of understanding between Ontario Hydro and Canada Square to cover" that term. So, leaving that, as background material, I take you also to exhibit 102. Now, there appears to be an important time, and I would like. . . .

Mr. Nastich: ~~What is~~ . I have 102. Thank you.

Mr. Shibley: Thank you. And in this memorandum you say, or somebody says, "Mr. Nastich, in particular, as well as other members of the Committee, stressed the importance of reviewing the agreement with the Corporation in its entirety. Mr. Sissons agreed that this was essential, and stressed that each detail in the negotiations of sundry ^{from} ~~committees~~ with the Corporation should be appropriately and completely documented. In this regard, the Commission is largely dependent on the competence and authority of Mr. Candy as Architect, and Mr. J. F. McCallum as legal consultant."

Now, Mr. Nastich, what is of concern to me, and I am going to put it right out on the table for you, on October 30th, Ames were advised that there was not to be a provincial guarantee. On October 31, it appears from Ames file also, that Mr. Moog was considering alternative financing then ^{for} ~~with~~ the Prudential, with which he had presumed he would be getting his funding since October 4.

Now, we find that within Hydro, you appear to be ~~as~~ you and others appear to be thinking in terms of the importance of reviewing the agreement with the corporation in its entirety. And I am just wonder, had you reached a point within the Commission where there was any prospect that the deal with Mr. Moog was going to fold, collapse and that because of this change of circumstance, in terms of no provincial guarantee, raising questions with financing, that the matter of an

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AA

(Mr. Shibley)

question
agreement with Mr. Moog was still an open/and that you felt,
as late as then, that the agreement, in its entirety, should
be reviewed.

Mr. Nastich: May I give some prospectus to that,
Mr. Shibley?

Mr. Shibley: ~~YES~~.

Mr. Nastich: During the summer of 1972, I was out
of the country.

Mr. Chairman: Mr. Renwick, Mr. Nastich wants you
to hear this.

~~Mr. Nastich: It is a beautiful prospectus on~~

~~being.~~

~~Mr. Renwick: That you call a police problem.~~

~~Mr. Nastich: A police problem, that's all, to~~

~~about.~~

2534 - 1 follows

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V.H.

~~Mr. Shibley: This is~~ ^{This is} kind of important —

Mr. Nastich: It's a beautiful exposition, Mr. Deans.

~~Mr. Renwick:~~

Mr. Renwick: I am sorry. We have a small police problem here —

Mr. Deans: We have a small police problem, that's all in ahead.

Mr. Nastich: During the summer of 1972 I was out of the country a lot on my borrowing programme and I missed several commission meetings. In particular, Mr. Shibley, I was not at the October 25 commission meeting at which time the negotiations were being finalized.

On November 1, I was at the commission meeting and that was the first opportunity that I had had to hear the results of the negotiations and I agreed with what I heard from Mr. McCallum and the decisions that were made.

The following Monday, at the commission meeting, at the general managers' committee meeting, I was concerned that my people, who would have to administer this agreement, had not looked at it, had not had an opportunity to look at it and you can see from my style, I like to have reports put together comprehensively so that you can see what you have to do. What I was saying here was, I want that agreement, which in my view had been approved by the commission on November 1, reviewed from a financial point view so that I could know, and my people could know, what it is we have to do.

Following this meeting, I instructed Mr. Peter Lamb to prepare a memo which reviewed the financial implications of the agreement and that is the document that appears as ^{at} December 6, which is ^{the} a financial assessment.

Mr. Shibley: I think it is December 4.

Mr. Nastich: December 4? Yes. And that's the history of that.

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V H

Mr. Shibley: So that when you use the words that stressed - or somebody used the words - ~~stressed~~ stress, the importance of reviewing the agreement with the corporation in its entirety as late as November 6, you were not then talking about a review in advance of concluding an agreement?

Mr. Nastich: No.

Mr. Shibley: You see, my confusion emanates from the fact that it looked to me, from reading the thing to Miss West of November 27, that all documentation had not yet been concluded and ^{that} as late as November 6, ~~that~~ you were still in the throes of reviewing details of the documentation. You see, ~~the~~ ^{it} goes on: "Mr. Sissons agreed and stressed that each detail in negotiations of ^{the} early compromise ^{with} the corporation should be appropriately and completely documented". This is after the fact of the agreement though?

Mr. Nastich: Yes, very much so.

Mr. Shibley: Okay. Mr. Genest, I am trusting that you will ~~not~~ have regard for that November 27 memo in establishing your chronology, if you will. I want to cancel out the idea I had in my mind, I must say, that at that time the question was reopened as to whether you were going to deal with Canada Square at all or not. But that wasn't the problem?

Mr. Nastich: No sir. As a matter of fact, Mr. Shibley, reading that as you did without the background, you would come the conclusion you did.

Mr. Shibley: Yes. All right. Having cancelled that out for me, can you then tell this committee what was taking place in early November that caused that type of memorandum, as well as the memorandum of November 8 which is a memo of a commission meeting wherein it says "Conversation dealing with building the question was raised by Mr. Nastich as to the valid reasons that could be listed which influenced the commission in adopting this method of obtaining a new head office

(Mr. Shibley)

building. Mr. Nastich outlined various points which ~~would~~ would require strong rebuttal and a firm statement on the advantages obtained by dealing with Canada Square for a negotiated contract rather than the commission undertaking the project itself or involving tenders from competent contractors."

Now can you tell me ^AMr. Genest, I am taking it that I am covering a topic that I want to cover as well as yourself, *being item 8?*

Mr. Genest: Sure.

Mr. Shibley: Can you tell me import of those two memoranda of yours?

Mr. Nastich: Yes. As I said, the November 1 was the date at which the commission approved the contract with Canada Square. I had been absent the previous week and there was an immense amount of documentation, as you can see, so at the general managers' meeting of Monday, Mr. Sissons was giving some information to other members of the general ~~managers~~ managers' committee who had been involved ⁱⁿ this - the marketing ^{general} manager and the chief engineer and the personnel man. At that point, I stressed the need to have some financial review made of this, because I was going to have

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XXXXXX

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5-5:05 pm

C.B

(Mr. Nastich)

~~Mr. Lamb said that the Commission had agreed to live with this agreement and that led to Mr. Lamb doing the work.~~

I think Mr. Shibley, that that was the weekend—just prior to that there was a Globe and Mail editorial on the high cost; it didn't relate directly to the building, but I think it was something to do with Hydro.

Mr. Shibley: November ~~the~~ 6th, there was a press item.

Mr. Renwick: NO, there was an editorial.

Mr. Nastich: An editorial I think it was.

Mr. Renwick: The first two paragraphs referred to the building, but then it went on to deal with a number of other aspects.

Mr. Nastich: Yes, yes. Well, at the Commission meeting on November 8th, frequently there is a point early in the meeting in which before the agenda starts, there is talk about general matters of interest, and my recollection is that I did not bring that subject up. Reading that carefully it says -

"In conversation dealing with building", and that's right; there was conversation on it, I don't know who brought it up. I again believe in documentation, I believe in trying to get things down on paper because it forces you to be clear, that we should list the reasons which influenced the Commission in adopting this method of obtaining a new Head Office building.

I, as I say, outlined some of the points here and it was at that point that Mr. ~~the~~ Gathercole said, "that's a good idea, I think we should do that." After that meeting I instructed Mr. Lamb again to see if he could put something together for the financial people and give it to Mr. Candy which he did do.

Now I understand from Mr. Lamb, he gave it to Ken Candy who was at the same time preparing something, some sort of a submission, as I understand from the evidence, for other reasons.

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C.B.

(Mr. Nastich)

I did not know that at the time, and I had no further involvement.

Mr. Shibley: Just going to exhibit 106, November 8th, Mr. Nastich, referable to the same meeting. It is an enlargement of what ^{was} ~~is~~ said.

Mr. Nastich: Yes.

Mr. Shibley: It includes the comments: "It was recognized that the same results might have been obtained by these methods, for the present manner of proceeding with the head office building does not guarantee that it would be necessarily cheaper or that the Commission would obtain a better building. It was agreed that with these questions in mind, answers would likely be required from time to time. In any event, it would be advisable for those sections" ~~and~~ and so on "concerned to prepare a detailed statement on why the Commission has proceeded in this manner for the head office building."

Now I'm particularly interested in knowing two things, really. ~~We~~ receive your comments on the observation here, that this method would not necessarily guarantee it would be cheaper, or that the Commission would obtain a better building.

Mr. Nastich: My recollection on that is unfortunately vague and I'll have to use what ~~I have~~ heard one of the lawyers here talk about, collateral circumstances. I don't really know what it means but it sounds appropriate.

Mr. Shibley: Why not?

Mr. Nastich: But in the July 6th memo of Mr. Dean, he had tried to answer a question which I had been concerned about which was the economics between constructing your own building and self-financing it, versus a lease-purchase, and in that memorandum he had given, I would think, fairly general answers. But essentially it was ^{that} ~~the~~ your lease-purchase in any one deal costs you about 1/2 per cent more, as I said earlier. So ^{as} ~~if~~ you say your financing is a little more expensive.

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C.B.

(Mr. Nastich)

Then you have to make an estimate on your maintenance. Is the maintenance done by ourselves going to be more economical ~~and~~ ^{than} ~~we get~~ it done outside, and his judgement, ~~and~~ with which I concur, was that the maintenance would tend to cost you more inside Hydro than it would by an outside firm for various reasons, ^t the main one being that our wage rates are some 20 per cent higher than the outside industry.

That left you with the building itself. Could you get a building cheaper ~~than~~ by public tender than you could by the developer route? Mr. Dean had simply ~~said~~ said you could assume perhaps a \$4-a-square-foot cheaper building by public tendering. So the net result was that ~~you would not~~ you would say it was more ~~economical~~ economical to build and self-finance the ~~building on your own~~.

~~But I think that was the only way to do it. This was~~

~~the only way to do it. Otherwise, you take...~~

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H-2536-1

(Mr. Nastich)

building on your own. Overweighing that was the delay factor. This was the fact that in public tendering it would take you some 18 months longer to get to the building, which was costing, for eight months, about \$2.5 million, ^{So} that while you could say, — you would think on a broad basis you could do better by public tendering, making a very broad assumption that public tendering itself would give you a # cheaper building and) I have heard many things recently which would incidate that is not always the case, overweighing that was the delay factor, And I think that was what I # was referring to, that in any presentation we made we should emphasize the fact that there was a \$300,000 a month delay cost which meant that we could ~~xxxxxx~~ get out building sooner ^{this sort of thing} by ~~substantiation~~, and that # really is the genesis of that. I do not recall saying it would obtain a better building and right now, I don't know what substantiation I would have for saying that.

Mr. Genest: This is not Mr. Nastich's memo ~~that's~~ ^{that's Mr.}

Easson's

Mr. Shibley: I know, it is a memo of the commission meeting

Mr. Genest: ~~that~~ that he dictates to himself and puts away in a drawer.

Mr. Shibley: Mr. Easson does that?

Mr. Genest: That's right.

Mr. Renwick: I understand that, Mr. Chairman, but Exhibits 105 and 106, exhibit 105 is the direct extraction from 106, and presumably 106 has the validity of being an accurate account of what took place.

Mr. Nastich: We did not see these minutes, Mr. Renwick. They were a memorandum to file which were kept by the secretary and, I guess just like any minutes, it depends on the people who have said it having a chance to review it soon after. The first time I knew this existed and saw it was when Mr. Shibley received it as part of the package of data from Ontario Hydro.

Mr. Genest: That's the point I want to make, Mr. Renwick.

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5.05-5.10p.m.
B.A.

(Mr. Genest)

A lot of these memoranda are Mr. Easson's own ~~and~~ they have not been shown like an ordinary minute would at the next meeting so that someone would say, "I didn't say that, that's inaccurate".

Mr. Fenwick: I can understand that. My only point was that Exhibit 105, which has some ^{what} ~~more~~ formal validity, is an extraction of the centre part of Exhibit 106.

Mr. Nastich: They are both memorandum to file, Mr. Renwick. Both ~~was~~ were ^{of these,} these are not minutes, both 105 and 106, were not seen by the rest.

Mr. Genest: Neither of them are minutes.

Mr. Nastich: I think you recollect there was a long discussion on this early in the hearing as to what was the difference between a memorandum to file ~~in~~ ^{could} short form.

Mr. Renwick: Yes, maybe it is because I never did quite understand ^{it at the time} ~~when~~ as to why ^{you} ~~we~~ would have ~~two~~ two memoranda ^{with} for file, one ~~was~~ part of a quotation, and ~~one~~ a number seven assigned to it if —

Mr. Genest: I'll tell you outside.

Mr. Shibley: Mr. Nastich, did you have any communication with Mr. Fleck in the early part of November?

Mr. Nastich: I had never met Mr. Fleck until this hearing.

Mr. Shibley: ^{Nor} ~~had~~ had any communication with him?

Mr. Nastich: ^{Never} ~~had~~ had oral, or telephone, ^{or written} communication.

Mr. Shibley: Did you have any communication with anyone in government, in November or December? ^{??} Let's take them one at a time - in November, 197~~4~~.

Mr. Nastich: No.

Mr. Shibley: Nor in December?

Mr. Nastich: No.

Mr. Shibley: So that so far as any information provided to government from ~~being~~, is concerned, it is no part of your function?

Mr. Nastich: Yes, I never had anything to do with the government on this subject at any time.

Sept. 19/73.
5.05-5.10p.m.
B.A.

Mr. Shibley: On October 23, and it seems to have been a vital day because of the fact that the documents were being reviewed in depth, and also that was the day on which Bradshaw was surprised to find the guarantee of the province was not to be forthcoming. Were you part of any of that discussion?

Mr. Nastich: What date was that?

Mr. Shibley: October 23.

Mr. Nastich: The commission meeting was October 26, I thought.

Mr. Shibley: It was, but you weren't at the earlier meeting with counsel, Mr. McCallum. You didn't attend any of them?[?]

Mr. Nastich: No.

Mr. Shibley: With respect to the variation in the wording as to the costing of the building from ^{the} definition as per the Candy-Moog agreement of pre-July 18, at least, and the use of the words "appraised value," were you consulted respecting that change?

Mr. Nastich: No.

Mr. Shibley: When did you first become aware of the fact that that wording was changed?

Mr. Nastich: November 1st.

Mr. Shibley: So it was an accomplished fact, so to speak, or was that at the commission meeting?

Mr. Nastich: It was at the commission meeting.

Mr. Shibley: Now, at that meeting, what took place in respect of that term? We know what others have said, but having regard for your own recognition of the importance of the elements that entered into costing, bearing in mind the whole prorating process was predicated on costs being construction costs, design fees and interim financing, no overhead, no profit, no royalties, no nothing else. Having regard for that being the basis of the prorating process, having regard for the advice that Mr. McCallum was giving as to the difficulties ~~that might~~

(Tape H-2537 follows)

September 13, 1973

5:10 - 5:15 p.m.

B.G.

H-2537-1

(Mr. Shibley)

~~...for the advice that Mr. McCallum was giving as to the difficulties~~
that might emanate from that wording being unclear, and the elements that might now enter into the computation of appraisal, of an appraised value of the building. WAS ~~anything~~ anything said by anyone on the financial side, so to speak, or anyone having to do with the evaluation of the four proposals, so to speak, to the effect: "Now wait a minute, if you are going to use that kind of ~~word~~ wording and that type of method of establishing value, as opposed to what had been the agreement between Hoog and Candy, we've got to start from square one, so to speak".

Mr. Nastich: My recollection of the meeting is that it ~~was~~ was the second of two meetings on this very same subject. Mr. McCallum and Mr. Candy came, and the most important item discussed at that session ~~the first one~~ was the \$40,000, for the commercial area. This was the result of an instruction by the Commission at the October 26th meeting that they should go back and negotiate something better. And there was, I think, a fairly lengthy discussion on what you could do, and ~~but then~~ finally the Commission agreed that they would go with that. Then, in conclusion, there wasn't a discussion on the appraised value. Mr. McCallum stood up and reiterated, or summarized some of the points, and he made this, ~~and~~ he said here and Mr. Gathercole ~~is~~ ^{said} he said, "We started here and this is the best we could do. You have a choice of what you want to do at this stage. Mr. Candy is saying you need a ~~34~~ \$34, a square-foot building, that's sort of the corner-stone," and Mr. Candy reinforced that, And he said, "With that as a proviso, and the fact that you can get quantity surveyors who can keep an eye on this for you, ^f if you can get to that \$34, a square-foot level, you have something that's workable." That was my understanding of it; that you have to assume that that \$34, a square foot was what you needed.

September 13, 1973
5:10 - 5:51 p.m.
B.G.

Mr. Shibley: Well, Mr. Nastich, though, ~~you~~ you're not answering the question I am putting to you. I think we established through you earlier that this was very basic to the pro-rating method of comparing the proposals, that cost would include only those three items. Now, the various people who were responsible for making that comparison on that basis were at that meeting.

Mr. Candy was there, is that correct?

Mr. Nastich: Yes.

Mr. Shibley: And was Mr. Mink there?

Mr. Nastich: No, Mink had left, ~~already~~.

Mr. Shibley: All right; you were there.

Mr. Nastich: Yes.

Mr. Shibley: And you recognized that ~~that~~ ^{that} ~~last~~ was a premise upon which they had pro-rated?

Mr. Nastich: I guess I should say I should have ~~seen~~ recognized. If you will remember, the pro-rating had been done some three months earlier. I had been in and out of this situation. I did not, to answer your question ~~directly~~, directly, no sir, I did not express any concern about that ~~in that light~~, ^{And}

Mr. Shibley: ~~Neither~~ did Mr. Candy.

Mr. Nastich: Not that I recollect, no.

Mr. Shibley: Did anyone?

Mr. Nastich: No.

Mr. Shibley: The fact of the matter is that ~~the~~ one of the ~~found~~ foundation stones for the pro-rating process was pulled out from under this agreement by this change of wording, and ~~nobody~~ nobody recognized that that had taken place. Isn't that so?

Mr. Nastich: Mr. Shibley, I think ~~I~~ I have to speak for myself on this.

Mr. Shibley: Yes.

Mr. Nastich: It did not come to my mind as something I should comment on. In the discussion ~~it~~ ^{it} ~~it~~ looked like the Commission did make a decision to go this other way. This was their alternative.

H-2537-3

Setp
September 13, 1973
5:10 - 5:15 p.m.
B.G.

Mr. Shibley: No, no, I'm not directing my mind now to the consequences of using different wording in terms of the profit element to Mr. Moog and the difficulties of costing, etc. I am now directing your mind to the selection of the developer; and earlier in your examination, you agreed with me that very basic to the pro-rating process that had been employed to select Canada Square, was that when you talked of a cost of \$34, that only included actual construction costs, interim financing, and design fees, nothing else. And now, at the last minute, so to speak, just as the pen is poised to sign the document, Mr. Moog is insisting, and continues to insist, that the wording be changed to "appraised value", which term ~~and~~ could be employed to say, "in addition to those three items, I am entitled to claim for overhead, profit, maybe royalties, and God knows what else, and even perhaps take some —"

Mr. Finlayson: Mr. Chairman, I think that's a most unfair summation of all the evidence that ~~we've heard which lead to this~~
~~(2) committee~~
~~creation by the / to adopt his wording.~~

~~is. Furthermore, in the past, we've heard only one that~~

(Tape H-2538 follows)

Sep 13, 1973
5:15-5:20 pm
V.H.

~~The Commission~~

~~we heard which led to the decision by the Commission~~
to accept this wording.

Mr. Bullbrook: But really, God is the only one that does know!

I am not being facetious, because we don't know what constitutes appraised value. Mr. Moog hasn't been able to tell us and nobody else has.

Mr. Shibley: But I am very concerned -- I will put it another way.

Mr. Finlayson: It seems to me ~~what~~ your question is, were you concerned about the fact that it now appears that your method of pro-rating didn't have any validity? Now that's really the question. I don't think we have to have all the drum beats and the roll ups in order to ask that question.

Mr. Chairman: That is what happens when you take the name of the Lord in vain? I think if we had left the Lord's name out of it, we might not be in this problem. Maybe you can put it another way.

Mr. Bullbrook: We had St. Paul this morning.

Mr. Shibley: Would you like to make an answer, Mr. Nastich? I noticed you conferring with your counsel so I ^{am} presuming I don't even have to ask the question.

Mr. Nastich: I asked if there was a fifth amendment in Canada?

I just have to answer that I did not question it.

Mr. Shibley: I realize you didn't question it but what is bothering me at the moment, Mr. Nastich, is this. You didn't question it, Mr. Candy didn't question it, so are we as a committee to take it that no-one at that meeting recognized the consequences of that change in wording and that basic concept in the evaluation of the building, to what had gone on earlier as a pro-rating process for the selection of Canada Square as the developers? Nobody recognized the impact?

Sep 13, 1973
5:15-5:20 pm
V.H.

Mr. Nastich: I don't know that. It may be that this came up at the October 25 meeting. This was, I understand, where a large part of the discussion was on that. I can answer for myself on November 1 ~~but~~ *but I didn't bring it up*

Mr. Shibley: I would like you to inform your-
self so we don't have to ~~call~~ ^{call} anyone else. Can you just right now inform yourself and Mr. McCallum? Was it ever brought to the commission's attention?

Mr. McCallum: WE are just trying to find the letter -- if we can find exhibit 96, we can answer you in a moment.

~~Mr. Shibley~~ *Maybe I can help you. On page 18* of exhibit 96, at the bottom, you will see that reference is being made in our letter to the commission, *It* is the big one; I think it was dated October ...

Mr. Shibley: Twenty-fifth?

Mr. McCallum: October 25, and I just forget at the moment the date upon which that ~~came~~ before the commission, you will remember it, ~~the 25th~~ *the 25th* October. Now at that time, sir, there was placed in front of the commission the formula, if you will, that you are considering now with Mr. Nastich and the words "appraised value". It was discussed in full at that meeting and at that meeting, as I recall, was the time the commission decided to accept that and to proceed on the assumption that they would assure themselves of ^a \$34-a-foot building. It was referred to but not in the sense of re-thinking it again, as I recall, on ~~the~~ *November 1*.

Mr. Shibley: Mr. McCallum, you are not answering the question either.

Mr. McCallum: I am not too sure that any question has been addressed to me yet but *Mr* I just trying to give you some information that I thought you ~~wanted~~ wanted. Perhaps I should ~~not~~ until you ask me ^a the question.

H.2539 follows

Sept. 13/73
5.20 to 5.25 pm
DT

(Mr. McCallum)

~~I don't want to see some information that I thought you wanted.~~

~~I don't want to do that until you have no objection~~

Mr. Shibley: What I really want to know is ~~was~~ whether at either of the meetings anyone, including yourself, said to the commissioners: "If we accept the phrase 'appraised value' such as to permit the inclusion of other elements of cost than the basic three, then the whole premise of comparison on a pro-rated basis of these four submissions is not valid."

Mr. McCallum: No, sir. So far as I'm aware, that wording nor anything to that effect did not take place. My memory is, however, that the decision to proceed, if you will, without having to rely on that formula, cut off any further discussion of the shortcomings in the formula. It didn't take more than the first shortcoming in the formula to be pointed out to them to make them realize that this wasn't what they had first felt was needed. It was right away at that point that the commission, after a very short ~~dx~~ discussion said - well, we can in any event ~~gxx~~ go around that, if you will - I don't think they used those words - we can achieve the same result by assuring ourselves that the thing that Ken ^{tells} ~~says~~ us we have to have, which is the \$34 a foot building, is what we get.

Mr. Shibley: You are on to the other problem again, I see. ~~Wxxx~~ What you are saying in effect, they only considered it in terms of getting value for their money. They didn't consider it in terms of the mode of selecting the developer.

~~Mr. McCallum~~ ^{Mr. McCallum} They headed off the sort of thing that you are putting to this witness now by reaching this other conclusion.

Mr. Shibley: Well, that's for the committee to consider ^{as a} ~~the~~ matter of record that the basis for pro-rating - a basis for pro-rating had been that understanding as to what was to be the costing of the building and having changed it, no thought was given by anyone to the effect it had on the selection of the developer.

Mr. Genest: Well, Mr. Shibley, we are not clear on that, you see, because on the pro-rating you would add a profit to everybody and the relative position of everybody, I suggest to you, would not really be affected ~~we~~ because nobody had a profit in the

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(Mr. Genest)

re-orientation and if you add one to Canada Square, you add one to everybody else, and you are right back where you started.

Mr. Shibley: Well, that's also a matter for the committee to consider. I just wanted it as a matter of record that it never was raised with anyone - or by anyone at that time.

Mr. Nastich: I did not raise it, sir.

Mr. Shibley: Now, I think I have covered everything I want and I think I have covered everything Mr. Genest wants. Do you have anything further you wish to volunteer?

Mr. Genest: I am sorry. I had one matter, Mr. Shibley, I wanted to put to Mr. Nastich, the background that he had raised some serious questions about the transaction at the June 29th meeting and I wish to put to the witness whether on November 1st when he was at the ~~exam~~ ^{he} commission, he was satisfied that the questions that were then in his mind ^{had} been satisfactorily answered and whether he approved of the transaction.

Mr. Chairman: Will you give the committee your answer on that one, Mr. Nastich.

Mr. Nastich: Yes.

Mr. Chairman: The answer is yes.

Mr. Shibley: I love witnesses like that. ~~The~~ ^{Yes and no.}
~~answered no.~~

Mr. Chairman: I thought you were answering my question, ~~and~~ ^{you had} you would give the answer. All right, the answer is yes.
Mr. Renwick.

Mr. Renwick: Mr. Chairman, I want to go back, because that's not the precise question I am interested in. The ~~the~~ precise question I am interested in is whether or not Mr. Nastich was satisfied after the June 29th meeting and before the July 19th meeting.

Mr. Genest: No, he was on holiday. He raised the questions and ran. I think Mr. Nastich gives that evidence.

~~Mr. Renwick: let me --~~

~~Mr. Nastich: Could I clarify counsel?~~

H-2540-1

✓ Mr. Nastich: Can I change counsel?

Mr. Renwick: Let me, perhaps a little bit laboriously because, let me tell you what is bothering me. I think you have done a magnificent job of rationalizing all of your memoranda and the reasons for them into a very smooth flow of the purposes for which they were designed without coming into any conflict within Hydro itself. They all just fitted perfectly in there, and I admire you for it.

But what I am concerned about is the sensation which we had. I shouldn't say we the sensation which I had is that your reservations at the meeting of June 29, and expressed subsequently in the memorandum to which I want to refer, seem to me never to have been adequately answered.

The second thing I want to touch upon is the — I am sure the is no privilege and if there was it has been waived — your relationship with Mr. McCallum, throughout this matter.

Mr. Nastich: That's right. Yes.

Mr. Shibley: I want to deal with the second part first.

Mr. Nastich: Yes.

Mr. Shibley: It seems to me quite clear that it was either on your suggestion, or because of your caveat that counsel was hired and that that counsel was Mr. McCallum. ^{2. Mr. Nastich: Yes 4 Mr. Renwick} Then throughout the whole of the examination of Mr. McCallum's file, when Mr. McCallum was giving evidence, it was quite clear that he was his mind was vitally concerned about the financing aspects of the agreement rather than the portions of it that Mr. Houser's partner was dealing with in the strictly legal sense of the term.

Now I take it you had a close collaboration with Mr. McCallum from the time you returned from your ~~holidays~~ holidays through to November 1 about this agreement.

Mr. Nastich: No. I'd like to answer your question. My association with Mr. McCallum started on this Beverley site.

Mr. Renwick: ^{Yes he} ~~it is~~ mentioned it.

Mr. Nastich: And we had many sessions like this there and you get to know somebody pretty well, and I grew to respect and like Mr. McCallum very much. When this question came up it

H-2540-2

(Mr. Nastich

caused a lot of turmoil for me, this building, because I had strong feelings about public tendering as an approach that I felt would protect the commission the best. All the rational economic arguments were against me because of the delay factor. You had a situation where the delay was very expensive and as a financial man I had to recognize that this was a real concern to the commission. And yet the proposal system was relatively new to me. Now I was quite busy on financial matters throughout the period after March and I had not been involved in any of the preparation of the memo. On June 20, I received a copy of the draft commission memo which eventually became the one that went to the commission on June 29 and was approved on the 19th. And all my earlier concerns came back to me. And those questions I expressed on June 29 were in my mind as I read that memo. And I thought two things. I thought it looked like we were going the lease-purchase route, and I had an inner turmoil on this. My people had worked on it and they felt the lease-purchase proposal system was quite reasonable. I thought that I didn't have the expertise, or my staff didn't, in terms of wrestling an agreement out of a developer, and Mr. McCallum came to mind. So I used him in two ways; one, as a person who I knew who knew something about this business, and we spent about three hours one day just talking this public tendering versus proposal business, much like the philosophical discussion that you got into with Mr. McCallum, but on this specific issue. And it still was an area of doubt in my mind as of June 26 when I wrote the letter, but I thought I would like to have somebody like Mr. McCallum to help us, if we went the lease-purchase route, to help us to be able to negotiate it. So I did instigate it, I talked to Mr. Sissons about it.

Mr. Renwick: That answers that part of it. Now I ~~am~~ want to come back to the selection period. This is the part that bothers me. And if Mr. Nastich doesn't have them -- you have exhibit 67?

Mr. Nastich: Which is that Mr. ~~Renwick~~ Renwick?

Mr. Renwick: That is the April 10 long proposal.

Mr. Genest: Mink-Candy report.

Mr. Renwick: The Mink-Candy report.

H-2540-1

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H-2540-2

(Mr. Nastich

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Mr. Nastich: Which is that Mr. ~~Nastich~~ Renwick?

Mr. Renwick: That is the April 10 long proposal.

Mr. Genest: Mink-Candy report.

Mr. Renwick: The Mink-Candy report.

H-2540-3

Mr. Nastich: Yes.

Mr. Renwick: And so far as that is concerned I want to refer to page 30. Okay?

And then I would appreciate it if you would have exhibit 74 which is the ~~exhibit~~ submission to the commission.

Mr. Nastich: What date was that?

Mr. Renwick: It was the June 23 one, ^{which} I gather is the one that for practical purposes the one ~~we~~ finally went to the commission. And I want to ~~ask~~ if you would make a note on it that I want to refer to page 4 of that one.

Mr. Nastich: Yes.

Mr. Renwick: And exhibit 79, which is the memorandum to you of July 6.

Mr. Nastich: Yes.

Mr. Renwick: And I want to refer, if you would make a note on pages 3 and 4 of that one. And exhibit 78 ~~is~~,

H-2541-1 follows

sep 13, 1973
5:30-5:35 pm
V.H.

(Mr. Renwick)

~~in which~~ in which I want to refer to pages 1 and 2. Now, deal with me ~~and~~ there is some element of repetition but I am not trying really to get into the method of pro-rating and all that discussion that we have had. On page 30 of exhibit 67, the pro-rating system is prefaced by these remarks: "A measure of the quality of the building relative to the rental rate could be used as a simplistic criteria of preference. Using cost per square foot as a measure of quality of the building, we could expect a comparative value ~~that~~ the proposals would be as follows."

You very delightfully referred to that simplistic criteria of preference as being ingenious, at least, that's what I took your reference to ingenious. I have never known that something ingenious was so simplistic!

Mr. McCallum: Take the wheel!

Mr. Renwick: But on exhibit ~~me~~


Mr. Genest: That's not bad!

Mr. Renwick: No, not bad. Now exhibit 74, page 4 — and we can forget about that exhibit ⁶⁷ exhibit 74 page 4 carries forward to the commission this matter.

MR. Nastich: Yes.

Mr. Renwick: Therefore, it was a crucial part of what was placed before the commission on June 29. No decision was made, and then we have your memorandum of -- which is exhibit 78 -- in which, dealing with that very question in item 3 at the bottom:

"The validity of pro-rating the estimated capital costs of the building from the four developers to come ^{to} an ostensibly standard comparison on annual cost per square foot" and going over the page, "I do not have the details of the method by which this was done, I think it is essential that the process be defensible to attack from disappointed developers. Would you ask Mr. Mink to look into this further?"

Then Mr. Mink does look into it, ~~in~~ exhibit 79, pages 3 and 4  H-2541 follows

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5.35 - 5.40 pm

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AA

(Mr. Renwick)

He then at the bottom of the page refers to "Pro-rating of estimated capital costs: On page 7 of the Commission memorandum, the rental rates have been adjusted to allow for a building costing \$34 per square foot, not for the purpose of selection so much as on the assumption that a building having a cost less than \$34 per square foot would not meet the quality standards. This is a judgement but also tends to reflect the differences in rental rates related to financing costs as follows:"

And I refer particularly to Mr. Mink's remarks that . . .

MR. Nastich; Mr. ~~Renwick~~ Dean's.

MR. Renwick: Mr. ~~Renwick~~ ^{Dean's} remarks that this is not a selection criteria ^{on/A} and then as he goes on, he comes to the bottom of page four, he says, "In general, it must be assumed at this stage that the following judgements are correct:"

And "(b) ^{that} the method of selecting a builder-developer satisfied the lowest cost building ~~criteria~~ criteria. (This question is closely tied with the financing . . ." and so on and so forth, experience and so on.

Now, somehow or other, all of the responses don't fit in. Now, it may be because of the accident of you being away on holidays, but the Commission then goes to its meeting on July 19th, and for practical purposes, approves of it, approves of the selection of Canada Square.

Now, I would like to ask you the specifically blunt question, not whether you approved at November 1st of all that was done and the deal as it was then made, but if you can, and bearing in mind that you were absent at the time, ~~do you participate in the decision~~ would you have participated in the decision at that time when it came before the Commission, for practical purposes, without anything having been altered, despite you having raised these questions, despite this

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5.35 - 5.40 pm

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AA

(Mr. Renwick)

memorandum of Mr. Mink that seems to be responsive of the proposition that it is not for selection at all as a criterion^{Ena} and secondly, that somehow or other, it must be assumed that the judgement has been made that the method of selecting a builder-developer satisfies the lowest cost building criteria, ^{it} that despite those matters, ~~the~~ Canada Square is then selected. ~~and~~ It seems, the way I read that, the thing went off the rails. So I have to ask you whether or not you participated ~~on~~ on the basis of your knowledge at the time ~~that~~ in the selection of Canada Square, despite the reservations which you have, and assuming you were going the lease-purchase route.

Mr. Nastich: There has always been a question in the mind of my financial people, Mr. Renwick, about the extent to which you should depend on pro-rating as the end result of a selection process and I think ^{it} I'll refer you back to that April 10th memorandum ~~which says~~ Mink and Candy say, "A measure of the quality of the building could be used as simplistic criteria preference. ^{using} ~~Used~~ cost per square foot as a measure of quality of the building, we could expect the ~~comparative~~ comparative value of the proposals would be as follows:" And then they say, "Considering the marginal economic differences in their proposals" and they were looking into proportionate percentages, ~~you know~~ the difference was fairly small, although the dollars were large.

~~Mr. Renwick: Once the pro-rating is done,~~

~~Mr. Nastich: Yes.~~

Sept.13/73
5.40-5.45p.m.
B.A.

H-2543-1

(Mr. Nastich)

~~percentage, you know the difference was very small although~~
~~the dollar were larger~~

Mr. Renwick: Once the pro-rating ~~xxx~~ had taken place.

Mr. Nastich: Yes. The selection may have to be based more on the qualitative factors associated with a lease purchase arrangement, So the issue came to me was whether the pro-ration to the system itself had validity; secondly, whether \$34.00 could be used as a basis for setting your level. Now, I think you are right in that Mr. Dean's letter was not completely responsive to what I was after. ~~xxxxxx~~ I was saying, are we sure about the method and his letter was saying "Well, it isn't that important as a basis for selection" as I read it *here*.

Mr. Renwick: That is precisely my point that it seems to come through to me that the commission, when presented with Exhibit 74, were entitled to assume that the results of the pro-rating system were intimately involved in the selection process; that it was the results of the application of the pro-rating system that moved it to a question of marginal economic difference, therefore we must move on to qualitative factors, or judgmental factors to make a selection, and from the commission's point of view, they were sitting there saying, "This is a selection technique and now, do we go along also ~~we~~ with the qualitative judgments?" and it seems to me, that if I were sitting on the commission, asked to face that, I would have said, "Well, the pro-rating system was an integral part of the selection process" Now, there was some bit of warning at the commission meeting or some problem, maybe raised by you, maybe raised by others, but they then deferred the decision, and your memorandum reflects your concern and part of it is solved by the arrangements for Mr. McCallum to work through with the matter, and then Mr. Dean's memorandum of July 6 specifically states that in Item 3 on page 3, pro-rating of estimated capital costs, on page 7 of the commission memorandum the ~~xxxx~~ rental rates have been adjusted to allow for

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(Mr. Renwick)

a building cost of \$34.00 per ^{square} ~~xxxxx~~ foot, not for the purpose of selection so much as ^{the} ~~the~~ assumption that ~~the~~ ^{or} building having a cost of less than \$34.00 per square foot would not ^{set} ~~mean~~ the quality standards. ~~And~~ ^{So} somehow or other it ~~will~~ strikes me that that never got back to the commission, that they should really disregard that pro-rating system and the results of it as ~~a~~ ^a selective matter, because they would then have to go back to what Mr. Mink states "in general, it must be assumed at this stage that the following judgements are correct," in other words, ~~are~~ taken as read, "that the method of selecting a builder developer satisfies the lowest cost building criteria." And of course, that assumption, ~~wasn't~~ is really open to serious question, ~~and~~ ^{and} ~~maybe~~ ^{maybe} it is just the unfortunate circumstances that you were away on vacation and the memorandum to the commission wasn't redone in the light of some of these comments of Mr. Mink's, if I read them correctly. ~~Or~~ ^{Or} maybe, ~~and~~ and that is why I asked you the relatively blunt question of ~~whether~~ whether you participate in the decision to ~~select~~ ^{select} Canada Square.

Mr. Nastich: I have learned a lot more about the pro-rating, Mr. Renwick, since the hearings started. At that time, when I looked at it, I was I think, satisfied ~~on the~~ ^{on the} basis ~~that it was~~ ^{that it was} a \$34.00 building, and the explanation in terms of the fact that there is no profit in it, the cost item, I thought that it was not invalid at that stage. I was satisfied. But looking at it now, ~~we~~ ^{we} have learned ~~a~~ a lot more.

~~Mr. Renwick: As I said my questions were not directed in terms of selection. I just wanted to try and keep the hearing open to the~~

(Tape H-2544 follows)

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Mr. Renwick: Well, as I say, my questions were not directed in terms of being critical, I just wanted to try and keep the balance ~~on~~ all of the people who were involved in this ~~and~~ in my own mind and try to put it into perspective. It seems to me if I were a member of the commission and I went to the meeting on June 29, and I had the commission memorandum submitted to me, that questions were raised which were sufficient to require -- to have the commission itself come to the conclusion that the matter should be deferred, and I ~~then~~ then come to a meeting of the commission on July 19 and nothing different, so far as the evidence is concerned, is put before the commission, and we therefore go ahead and accept the conclusion of the commission, ^{or} we then go ahead and accept the conclusion of the memorandum and make the selection which points to Canada Square, and we make that selection, it seems to me to go a long ~~way~~ way toward ^{let me say this carefully,} toward understanding the way in which the commission viewed the problem. Now it might be possible to say, "well, somebody on the commission should have asked further questions," but I kind of think if I were sitting on the commission and some questions had been asked and there had been some discussion and we deferred the matter and it comes back in the same form that I would have gone along too. I am not asking you ~~immediately~~ to comment on that.

Mr. Nastich: Well, I was not at the July 19 meeting and I don't want to speculate, but in other meetings that we have had, Mr. Renwick, where somewhat the same subject has come up, there has been oral discussion about it. You know, either somebody says, "this is satisfactory" or "it is not satisfactory." Now I have got to assume -- well, I can't assume what happened at the July 19 meeting -- but I accept your point. I think it's ~~and~~

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Mr. Renwick: Could I ask, Mr. ~~EM~~ Genest, is there any other information? ~~or~~ Am I missing something? Is it in fact correct that there was~~not~~ nothing further, no further input to the commission ~~at~~ July 19?

Mr. Genest: I think that is quite right, Mr.

Renwick

Mr. Chairman: Mr. Nastich, was your holiday scheduled or were you urged to go along?

Mr. Bullbrook: That's not a blunt enough question!

Mr. Chairman: Don't answer that one.

Mr. Renwick: May I just deal with one last matter, Mr. Nastich? I am worried about exhibit 236, on the first page, that has just been put in, because I don't see

Mr. Nastich: Which one is that, Mr. Renwick?

Mr. Renwick: The estimated annual cash flow for Canada Square.

Mr. Nastich: Yes?

Mr. Renwick: AS I take it, Mr. Shibley, we don't have anything from ~~EM~~ Canada Square in terms of cash flow or ~~see~~

Mr. Shibley: Their files disclosed no ~~see~~

Mr. Renwick: ~~see~~ Projections of any kind.

Mr. Shibley: ~~projection of any kind.~~ You will remember that I asked Mr.

Coles also, but their ~~see~~ files as produced contained none and he said ~~he~~ ^{they} didn't do anything except ~~he~~ ^{they} -- he did say latterly that they did it for one year only but in terms of the overall, there is no material. There was material in each of the other three developers' files breaking down their maintenance costs and breaking ~~down~~ ^{down} their cash flow projections. I think Ellis-Don's material, it is not an exhibit, but even included computer run~~off~~-offs on cash flow. So did Y ~~and~~ ^{and} R, now that I think of it; they had computer run-offs as well.

Mr. Renwick: Now ~~this~~[^] and perhaps you can't help me, but in the lack of any other information I have got to try and understand page one. I don't have any particular problem with attachment A, I think that is quite straightforward and I think you, so far as I need to, the commercial rental flow is there. So far, leaving the assumptions aside for the moment, the cash flow excluding commercial rents ^{are} ~~are~~ figures for practical purposes taken from the agreement.

Mr. Nastich: The first two, Mr. Renwick, the ~~revenue~~ revenue, the building lease cost of \$⁴~~1~~84, which is the net rental, and the financing costs are straight from the agreement.

Mr. Renwick: Yes. So that net revenue for management, maintenance and profit of \$1,554,090 are straight mathematical --

~~Mr. Nastich~~

Mr. Nastich: That's right, it's a sub[^]strat[^]tion,

H-2545 follows

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H-2545-1

(Mr. Nastich)
(Mr. Renwick)

~~... is a straight mathematical~~

~~... that's right ...~~

reduction

Mr. Renwick: Yes, right, and we come then to the estimated management and maintenance costs, and that's certainly within the range of what we've been talking about during these ~~our~~ hearings.

Mr. Nastich: Yes.

Mr. Renwick: So it's, you know, give or take various matters. And this seems to lead to the conclusion that on this ~~base~~ basis there is going to be a continuing net loss to Canada Square, unless ~~the~~ they can do something about the commercial areas, --

Mr. Nastich: Yes.

Mr. Renwick: -- which are, ~~the~~ from everything which Y and R and from our own knowledge of the location and the lack of facilities there, and so on, you know, the general problem of University Avenue, is quite a speculative matter, as to how successful it will be, And maybe you have to be an entrepreneur in order to make something like that go and turn it into something successful, and I wish them well because, ~~as~~ if Mr. Sissons' barber goes there I may have a haircut.

Mr. Genest: You could start wearing a vest and go back to Borden, and Elliot!

Mr. Renwick: Yes.

Mr. Shibley: Fifty cents.

Mr. Renwick: Can you help me as a, ~~I~~ if I can use the term, as the financial expert, what additional assumptions could you make for me with respect to paragraph one, which, if varied on various terms would begin to produce a cash flow, a positive cash flow for Canada Square? That is in terms of capital cost allowances, and that kind of allowance, because I just find it difficult to believe that it's that marginal.

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Mr. Nastich: There's two ways to it, you can present this in two ways: What we were trying to show you here was how sensitive the commercial rents were, Mr. Renwick. There is no,-- if you turned it and said, if you put your statement together and looked at only the Hydro space, and then the commercial space, as two separate entities, you would find that there is a margin which is built in here for the office space for Canada Square. But the way this is, we have ~~the~~ taken it into one big bulk, and we said "let's take the commercial area as a separate ~~variable~~ variable". The way in which they could make money, is if their maintenance cost was less than \$1.45.

Mr. Renwick: Yes.

Mr. Nastich: And if there was a profit on building construction. But that still wouldn't show up in this rental rate. So it is marginal.

Mr. Renwick: I certainly took the drift of Mr. Candy's remarks to be that although there is this vexed problem of appraised value, that with the inflation presently going on, ~~that~~ this may be an incorrect conclusion, but the conclusion was that likely the exercise will be academic.

Mr. Nastich: Yes.

Mr. Renwick: There won't be any reduction.

Mr. Nastich: Yes.

Mr. Renwick: ~~But~~ ^{That} the appraised value will be at least \$44.4 million, and then we come strictly to the profit on building construction, and strictly to the question of tax advantage through capital cost allowances, as the areas within which Canada Square has ~~will be making~~ the possibility of making ^a profit. ~~Does that sound~~ ^{Is} reasonable? ~~Is there anything else?~~

Mr. Nastich: That's right. If there is a capital --

Mr. Renwick: Is there anything else that's ~~wrong~~ --

Mr. Nastich: No, there isn't.

Mr. Renwick: And the maintenance, ~~that's~~

Mr. Nastich: Yes, the maintenance element. But this analysis says that the profit area is in the commercial side

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(Mr. Nastich)

of the business.

Mr. Renwick: Okay, thank you, Mr. Chairman.Mr. Chairman: Mr. Renwick. Any other questions - Mr.~~Mr.~~ Hodgson.

Mr. R.G. Hodgson: Mr. Nastich, you made reference to your luncheon with Mr. McCallum prior to his being hired by the Commission. Do you recall the date?

Mr. Nastich: Just a moment. *It was in June.*

Mr. R.G. Hodgson: I have a question in my mind as to what time Mr. McCallum put on the luncheon, - and -

Nastich:Mr. ~~Chairman~~: Yes, you're right, Mr. Hodgson.

Mr. R.G. Hodgson: We seem to have problems with luncheons, and I just question the time that he put on it.

Mr. Nastich: Mr. McCallum had said it was in early July.

Mr. R.G. Hodgson: That's right.

Mr. Nastich: And that was [^]that was just [^]an error. It was -- I have a schedule here -- June 27th.

Mr. R.G. Hodgson: Yes.Mr. Nastich: It was a Monday.

Mr. R.G. Hodgson: Fine; and you were exploring with him the questions that were in your mind as to [^]that you had raised earlier, ~~or~~ either in a meeting, or had arrived at questioning and you were exploring this whole area with him.

Mr. Nastich: Yes.

Mr. R.G. Hodgson: And you subsequently went back to the Hydro and recommended that he be hired for ^{the} ~~this~~ project.

Mr. Nastich: ~~I suggested him to Mr. Sizsons and Mr. ~~Chairman~~ our chief legal counsel.~~

Mr. R.G. Hodgson: ~~When you were away on holiday and ~~the~~ were away on~~

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Mr. Nastich: I suggested ~~that~~ Mr. Sissons and Mr. Raney, ^{our} ~~our~~ chief legal counsel ~~was~~

Mr. R. G. Hodgson: When you ^{are} ~~were~~ away on holidays and when you ^{are} ~~were~~ away on Hydro business, who assumes your position, or who answers for the financial side?

Mr. Nastich: I have four directors reporting to me, and during the time I was on holiday in July, it was the controller, Mr. Gomer, and he was the ~~one~~ one who sat in on the commission meetings of July 12th and 19th. In October, it was Mr. Fraser who is my chief accountant, and sometimes it's the Treasurer. It is not one man, Mr. Hodgson, and as a result there is a difficulty because frequently he is not as well versed in any particular area, like, for example, Mr. Gomer would have had very little, if anything, to do with the building so that he wouldn't --

Mr. R. G. Hodgson: He wouldn't question on these points?

Mr. Nastich: No, sir.

Mr. R. G. Hodgson: The other thing I wanted to ask you, in regard to Hydro borrowing in ^{Switzerland} ~~Swiss~~ you negotiated that?

Mr. Nastich: Yes, with my Treasurer.

Mr. R. G. Hodgson: With your Treasurer. Do you remember the reason why a different bank was chosen as the principal ^{one} ~~one~~?

Mr. Nastich: Different from whom?

Mr. R. G. Hodgson: Than the previous borrowing.

Mr. Nastich: No, we have never borrowed in Switzerland before.

Mr. R. G. Hodgson: You just chose your own principal ^{one} ~~one~~ in this case?

Mr. Nastich: Well, what you have in Switzerland is three large banks; Credit Suisse, Swiss Federal and Union Bank, and In '68 or '69 I think the Province of Ontario, together with us, visited Switzerland, I wasn't involved, and talked to the three bankers and based on ~~on~~ I don't know what criteria they used, they selected the Union Bank, and that Union Bank then becomes what we call, and Mr. Allan knows this, the lead manager, and that's really your chief ~~underwriter~~ underwriter in Switzerland. The other two ~~big~~ big banks ~~are~~ are what

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we call co-managers; that is, they participate in the borrowing under the direction of the Union Bank, but they are the main managers, and then there's a syndicate of about 15 banks in Switzerland who sell the bonds. Now the Union Bank has been in contact with the province regularly. We keep saying to them — or Ontario says, "When are we going to get in the queue?" They say, "We have put ~~in~~ your name in and the ^{Swiss} ~~banking~~ authority says, 'Well, not this year for Ontario.'"

Early in 1972, Mr. Macdonald, the Deputy Treasurer, wrote and said, "Look, what's the chance of getting us in this year? We would certainly like to establish a foothold in the Swiss market, and we had a good response. They have put the name of Ontario in the ~~in~~ queue. ~~and~~ Then in March or April of 1972 the Swiss banking group got together and for political reasons, internal political reasons, they ~~have~~ decided that they would not want to lend money for the remainder of 1972 to any provincial entities anywhere in the world. Now, Ontario, ^{and Ontario} Hydro always are seen together on the international market. As soon as the Union Bank realized that, they wrote to Mr. Macdonald and said, "You can't get in but if Hydro is interested, fine, and I have put their name in in any event," and this happened around the end of June. I think I gave Mr. Shibley a chronology of that Swiss financing.

It was after I got back that I became involved, in late July. We went there ^{at} the end of August and that was ~~when~~ when the issue was ~~discussed~~ ^{discussed}. It is five and a half per cent for some hundred million ~~of~~ Swiss francs, about \$20 million or \$25 million.

Mr. R. G. Hodgson: In that case it would be your recommendation that they take this loan or a part of it?

Mr. Nastich: Yes, I would get the concurrence of the chairman and the general manager to proceed to talk to them, and when I got to the stage with the Swiss where they gave their commitment that they might go, then I went to the commission and I think I did this late July for commission approval, to say, "Is it all right?" And then I have to go to the government, to the Treasurer, and get his concurrence and it goes through as an order-in-council.

Mr. R. G. Hodgson: Channel of events.

Mr. Nastich: Yes.

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Mr. R. G. Hodgson: In the case of Hydro pension funds, do you have ~~any~~ anything to do with that?

Mr. Nastich: Yes.

Mr. R. G. Hodgson: What would your responsibility be in relation to that?

Mr. Nastich: I am responsible for all aspects of the pension fund in the line capacity, that is the actuarial side of it, deciding, you know, what the contribution should be from Ontario Hydro and the investment side. ~~The Treasury people~~ ^I have a pension fund manager and several people who ~~are~~ keeping in touch with the market and economic conditions and recommend investments ^{at} the pension fund to the investment committee of Ontario Hydro and this is approved by the commission.

Mr. R. G. Hodgson: Who makes up the pension committee?

~~Mr. Nastich: The pension committee is the chairman, the first vice chairman, Mr. Arthur Evans and the general manager~~

(H-2547 to follow)

11-2547.1

Mr. Nastich:

The pension committee is the Chairman; the first vice-chairman, Mr. Arthur Evans; and the general manager; and myself; and the Treasurer is the responding authority.

Mr. R.G. Hodgson: I note in one of the memos that in about three years hence that this is going to be in the realm of about \$40 million annually, that may be invested.

Mr. Nastich: Yes.

Mr. R.G. Hodgson: It is a considerable responsibility.

Mr. Nastich: It is about \$450 million ^{the} size of the fund and it is growing fairly rapidly.

Mr. R.G. Hodgson: You know of no circumstance in which Canada Square had considered using pension funds for financing either in the long term or in the short interim ^{or} construction?

Mr. Nastich: It was never mentioned to me. I was never aware that there was any consideration by anybody about this, about using our pension fund until this hearing, and there were two people, it turns out, if you look at the proposals. Horizon had made the proposition that they would like to participate, and as I understand from the evidence here, perhaps Canada Square.

Mr. R.G. Hodgson: But you had also done a study in relation to the pension plan by one of Hydro people in regard to lease-back, and the possible ~~xxxxxx~~ usage of such funds.

Mr. Nastich: Yes, in October of 1971, I think, Mr. Dean, who incidentally I guess will appear here was an assistant treasurer and was quite aware of the pension fund. He always had a feeling I guess, that there was a way in which, there should be a way, in which you could make use of the pension fund. And the commission policy had never been to use it, and I agreed with that. I still feel that we should avoid this type of situation. He did have the idea. He proposed it. But it never went anywhere.

Mr. R.G. Hodgson: Thank you very much, Mr. Chairman.

Mr. Chairman: Any other questions? Thank you very much Mr. Nastich for your clear and helpful answers.

H-2547-2

Mr. Nastich: I have one concern, Mr. Chairman. I gave some figures on the power sales and I may be wrong, I don't know, I haven't had a chance to check. I deal in millions so often that it is fairly substantial, but unless I can check it, I don't know if it is important. I just didn't want to mislead the committee.

Mr. Renwick: I think it would be helpful if you could look into it and give us your best estimate.

Mr. Allan: It sounded very optimistic.

Mr. Nastich: That is why I am concerned. When Mr. Allan questions my figures, I figure I'd better check them. I may well be wrong by an order of \$10 million or so.

Mr. Deans: And what's \$10 million?

Mr. Nastich: Can I leave it, Mr. Chairman, that if I am seriously in error, I won't come back?

Mr. Chairman: Mr. Nastich, thank you very, very much for being with us. You have been most helpful.

Gentlemen, the hope is that as far as Mr. Shibley is concerned that he won't be long with Mr. Lamb or Mr. Dean. Maybe one of you will be, but let's push on for a few minutes anyway. We may be able to be through before we need to adjourn.

PETER LAMB, Sworn.

Mr. Shibley: Exhibit 235, I think has been prepared by yourself?

Mr. Lamb: That's right.

Mr. Shibley: Would you just explain it in general terms as to how it is made up?

Mr. Genest: We know who Mr. Lamb is?

Mr. Chairman: Mr. Lamb, very briefly will you tell us. ~~xxxxxx~~
~~xxxxxxxxxxxxxx~~ Mr. Genest: I think he works for the Hydro.

Mr. Chairman: Will you tell us who you are and what you do?

Mr. Lamb: Yes, I'm employed in the finance branch of Ontario Hydro. I am an economist by profession. A little background to this exhibit. You already have an exhibit, I think exhibit 114, an estimate of the annual savings in 1975 on the new building compared

2548 next

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6:05 - 6:10 pm

C..B

(Mr. Lamb)

~~an estimate of the annual savings in 1975 on the new building~~
compared to present accommodation, and ^{that} gave a figure of some
\$2.4 million, I believe. It occurred to us, in ^{that} ~~the~~ long-term
agreement like this ~~we~~ we may be misleading people by suggesting
a \$2.4 million in the first year, which may well evaporate over
a period of time.

So I prepared this calculation which is simply a
projection of what I think the savings might be ⁱⁿ ~~at~~ the year
1985. The way I did it was simply to take the 1975 base
from that exhibit and make projections. I claim no accuracy
for the projections themselves. They, ~~to~~ to my mind, were
reasonable; my own judgement to a large extent. What I do
say though is that the assumptions that I've made in terms of
escalation and rental rates affect both values, so the
differences would tend to cancel out. I don't know whether
~~we~~ you want me to go through the figures precisely.

Mr. Shibley: NO, I don't. I just wanted to establish
that these calculations are based on certain assumptions.

Mr. Lamb: Certainly.

Mr. Shibley: And they are in the overall variable
in a measure that really can't be ascertained.

Mr. Lamb: Certainly not, the projections are from
1975 to 1985, which is extremely difficult in any case.

Mr. Shibley: YOU can't, for example, really compare
the arrangement whereby Hydro might enter into a rental of
a building which it would occupy on a long-term lease, with
the lease-purchase transaction in question on this basis, because
this is based on adjustments of basic rental rate on a three-
year basis which amounts to \$2 million of the differential.

??
Mr. Lamb: YOU are referring to the \$2,030,000
at the top?

Mr. Shibley: Yes.

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C.B.

Mr. Lamb: That calculation is an assumption that under the present accommodation we would in 1985 have to lease additional space of some 200,000 square feet.

Mr. Shibley: What I'm talking about, Mr. Lamb, is this. Let's say that Hydro had not decided to build on a lease-purchase at all, and decided just to go out and rent 800,000 square feet as at November 1st, 1972.

Mr. Lamb: Yes.

Mr. Shibley: It would not enter into a lease whereby it would be subject to escalation of the rental rate every three years during the term of its lease. It would rather enter into a lease of 10 or 15 years.

Mr. Genest: This document isn't intended to show the savings. I think the only thing it is intended for is to show the savings, assuming that Hydro discontinues the way it is going now.

Mr. Shibley: Yes, but that is a comparison that isn't really very useful, if I may say so. That is the point of my questioning. ~~Either~~ ^{Either} Hydro was going to build a building of its own on lease-purchase or otherwise, or it was going to take a basic decision to continue to rent. Now if you are going to compare cost ^{of} ~~to~~ rental with cost of building, you've got to be realistic and talk in terms of a lease of, say, 10 years.

Mr. Lamb: I think if you are talking in terms of the present accommodation, the judgement that I was making, ^{and} I think one would have to make in this calculation, is what you would believe the rental rates would be in 1985.

As I said at the start, I didn't presume that my figure was accurate or based on any substantial studies. But the figure I've used of \$10 a square foot appears in the first calculation and the second. So if you wanted to revise the rental rate on the market, if you like, in 1985, you ^{could} take numbers out of both top and bottom and it may not ^a affect the difference too much.

Mr. Shibley: That was the point I was making. It is

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C.B

(Mr. Shibley)

Just one of those case where I'm concerned lest we put an interpretation on the figure that isn't really warranted in terms of what we are trying to compare here. That's all I'm concerned about.

Now then Mr. Lamb, you also prepared exhibit 119, which is dated December 4, 1972. It is a memo from ~~you~~ yourself to Mr. Nastich of that day, attached to ^{an} in-depth analysis of the transaction between Canada Square and Hydro. I'm interested in the last part of that letter, the last part of the last sentence in that letter, which reads:

~~The report is essentially concerned with the~~

~~agreement itself and does not cover the more general~~

H2549 to follow

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V.H.

(Mr. Shibley)

~~... of first hand, the 221 page of the 1971 document in~~
~~... letter which reads:~~ "The report is essentially con-
cerned with the agreement itself and does not cover the more
general rationale for the ~~kind~~ building which I believe is
adequately dealt with ^{in the document} prepared for the provincial government
on November 15, 1972".

Now, were you in that respect referring to the
document which was remitted of that date, under cover of a
letter of November 16, 1972, to Premier Davis by Mr. Gather-
nie Cole?

Mr. Lamb: I am sorry. Is that exhibit ~~100~~?

Mr. Shibley: ~~One one fourteen~~ ¹¹⁴ is the covering
letter ~~with~~ which, I believe, enclosed a narrative of November
15, 1972?

Mr. Lamb: Yes.

Mr. Shibley: That's the document ~~11~~ that you were
referencing?

Mr. Lamb: Yes.

Mr. Shibley: Now when you said in exhibit 119
that the document was prepared for the government, what was
the information you had in that respect that caused you to
make that observation?

Mr. Lamb: I was simply reminding Mr. Nastich
that ~~that~~ he had already asked me to ~~re-examine~~ prepare what
we were calling a rationale for the building, or a brief
statement on the building. The document which I prepared
and handed to Mr. Candy on about the 13th November, and I
was aware that he was preparing a statement to be handed
~~in the province~~, to the provincial government, and that
dealt with the overall basis of ~~the~~ selection and the
location and I was simply emphasising to Mr. Nastich that
my review was particularly looking at the agreement itself.

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Mr. Shibley: I was only concerned, because there was some discussion earlier as to the purposes of the document and in this letter it says that it was prepared for the provincial government on November 15. Was that your understanding as at December 4 as to the purpose for which the November 15 document was prepared?

Mr. Lamb: My understanding was that it was being prepared to be sent to the provincial government. No implication about ~~any~~ no implication.

Mr. Shibley: Then, on page 12 of the review that you effected ~~any~~

Mr. Genest: Can you give me that exhibit number again please?

Mr. Shibley: Its 119 dated December 4, 1972. This was after the ~~Mixxxxx~~ Nixon questions were tabled. On page 12 towards the bottom of the page, it says, ~~the actual amount to be borrowed~~ "I am sorry. "The protection afforded to Hydro by the agreement is in terms of the upper limit of the principal to be borrowed, \$45 million, and the repayment on the financing \$3.35 per square foot ~~for~~^{per} year. Since the actual amount to be borrowed and the interest rate would not be known to Hydro in advance, it is not possible to establish the rental to be paid under the net lease as principal and interest on the permanent financing. However, it is estimated..." and this is the part I am interested in asking you about, "It is estimated that the rates given in the agreement will allow Canada Square to borrow between \$42 million and \$45 million at interest rates between eight per cent and nine per cent."

Mr. Lamb: Yes.

Mr. Shibley: Now, is that an accurate statement?

Mr. Lamb: What I ~~a~~ intended by that was that the \$3.35 repayment limit would allow Canada Square to borrow \$45 million at roughly eight per cent or \$42 million at roughly nine per cent.

Mr. Whibley: Then it goes on: "It remains to be seen, therefore, whether Canada Square can obtain the necessary permanent financing for the building at an attractive rate of interest. Ontario Hydro will only benefit from low financing costs if ^{its} interest rate falls below eight per cent, ~~Not~~ considered likely at this time." Now what interests me, Mr. Lamb, is that this document was prepared on December 4, 1972, and the rate of eight per cent had been set at a meeting with the Prudential on October 4, ~~the~~ the first letter of a preliminary commitment ~~a~~ nature was November 8, and it wasn't made final by the finance committee until December 12 and confirmed later on still in December. But were you still of the allusion ~~that~~ at the time you did this memorandum on December 4, 1972 that the interest rate on the money was going to be ~~an~~ might be less than eight per cent?

~~Mr. Lamb: I was under the impression. The interest rate had been set at~~

~~Mr. Whibley: I see. You~~

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Mr. Lamb: I was under the impression that the interest rate had not been set.

Mr. Shibley: YOU hadn't ~~o~~ yet ~~been~~ been told.

Mr. Lamb: I hadn't, no.

Mr. Shibley: I have no further questions.

Mr. Genest: I can't believe it.

Mr. Chairman: Mr. Genest, have you any questions?

Mr. Genest: No, sir.

Mr. McCallum: Hurry up, Peter, get out.

Mr. Chairman: Thank you, Mr. Lamb: Mr. Dean, please.

Mr. Genest: I told Mr. Dean ~~o~~ on May 24 that he could be expected to be called in three days.

JOHN DEEN, Sworn.

Mr. Shibley: Mr. Dean, I want to produce to you Exhibits 14, dated July 16....

Mr. Genest: Could ~~y~~ we have a little order in the room, Mr. Chairman? I can't hear the evidence.

Mr. Chairman: There has been, this afternoon, an air of frivolity which I think we can all understand, but it is still an ~~an~~ enquiry and....

Mr. Genest: It is like the last day in school.

Mr. G. Hodgson: Mr. Chairman, ~~may I~~ ask who he is?

Mr. Chairman: All right. Mr. Dean, will you please tell me who you are, who pays your salary and what you are paid to do?

Mr. Dean: I ~~was~~ employed as ~~the~~ manager ~~of~~ of financial analysis and policy research for the Ontario Hydro, ~~and~~ and I have been there with them for roughly 14 years.

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XXXXXXXXXXXXXXXXXXXX

Mr. Chairman: Thank you.

Mr. Shibley: Mr. Dean, I am going to tell you in advance what my question is going to be because I have one ^{basic} ~~major~~ matter I want to take up with you and ~~that~~ that has to do with the motivation that inspired you to do two things: One, to issue a series of memoranda in late ~~the~~ August; ^{on} August 25 you sent out two memoranda and August 27 another one, which elicited responses from three different departments of Hydro, and ~~and~~ another -- I am having trouble concentrating my self right now, Mr. Chairman. The other thing I want to direct your mind to is the communications had with you by anyone referable to the relationship of the Premier with Mr. Moog as friends, and the fact that they had made a trip to Europe ~~during~~ during the summer of 1971. I am also ~~now~~ going to be asking you, and I tell you again in advance so you will understand why I am reviewing these documents with you, why it is that in your early memorandum you seemed to be negative in your approach to the lease-purchase type of transaction with Canada ~~before~~, whereas, in your later memorandum, you seemed quite positive. Now, with that pre-knowledge ^d _n of what I want to ask you about, I refer you first to your own memorandum of July 16, 1971, which was prepared, I believe, on the basis of a review of Mr. Cameron's ~~earlier~~ earlier material. Is that not so?

Mr. Dean: July 16, 1971, is Cameron's memorandum. It is addressed to Jim Smith.

Mr. Shibley: I'm sorry. It is August 18, Exhibit 18, that I want to take up with you. August 18.

Mr. Dean: That is a memorandum from me to Jim Smith?

Mr. Shibley: Yes. And you say in that memo, "Bob Cameron recently reviewed the financing. The memoranda do not verify that the type of financing ^{made} available to the institute was primarily responsible for resulting in a low rental rate as claimed by Parry Brooks". Do you see that? So that that memorandum was

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(Mr. Shibley)

basically negative. Do you ~~not~~ agree with me?

Mr. Dean: Well, negative in the sense that we didn't see the huge savings that Barry Brooks in his enthusiasm tended to suggest, yes.

~~Mr. Dean: Yes, I agree, in agreement to that memorandum.~~

~~On August 22, 1973, the following was received from the~~

~~London office of the British Intelligence Service.~~

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AA

~~(In - 1973)~~

~~it is the best feeling that Barry Brooks, in his enthusiasm~~
~~intended to correct, yes.~~

Mr. Shibley: Now, then, subsequent to that memorandum, on August 25th, you memoed Mr. Farmer, the Treasurer of Hydro. Is that correct?

Mr. Dean: Right.

Mr. Genest: What's the number?

Mr. Shibley: That's exhibit 186.

Mr. Dean: I remember these documents.

Mr. Shibley: And in that memorandum you said to him August 25th is the date of your memorandum, August 25th, 1971. "We are co-ordinating efforts from here relating to the possible financing alternatives and would ask you to consider the financing of the new building from two points of view:

- "(1) If the building were financed in our normal manner, would this impose too great an additional strain upon requirements?
- "(2) Would it be possible to use pension fund monies from the point of view of availability of funds (including possible sale of 98's, 83's, or Quebec bonds, for example)?

We will be getting in touch with you later regarding any other restraints on the use of pension fund monies, including legal aspects, and will also be discussing with you possible alternative means of financing, including leasebacks."

So you fired off that memorandum ~~about~~ to MR. Farmer, and got in response from him the memorandum wherein Mr. Farmer says ~~that~~ "You shouldn't encroach on our normal borrowing sources."

In addition, on the 25th of August, you also ~~memoed~~ memoed MR. Raney, exhibit 187 and said, "We are again considering the possibility of construction of a new head office building . .

"We have discussed with you previously, the limitations from a legal point of view but I don't find on record that we

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(Mr. Shibley)

HAVE A firm position. I would, therefore, like to know two things:

"(1) Whether there would be any problem because of the statements in our recent prospectuses and agreements in arranging financing secured by the building as a specific asset; ~~etc.~~ . . .

"(2) What are the limitations on having the pension fund investing money in the building . . ."

And as a result of that memorandum, you got a memo back from Stewart of the legal department saying, "No, you can't do it. You can't make a specific charge."

And then on August 27th, 1971, by exhibit 188, you also memooed MR. Gush. Who is Mr. Gush by the way?

Mr. Dean: He is one of the analysts on the . . .

Mr. Shibley: Yes. "We have been requested by Building Admin. to look into the possibility that the method of financing used by OISE in the Bloor Street building might be appropriate to our new Head OFFICE BUILDING. Bob Cameron's memos of July 16 and 26, 1971, cover most of the ground on this request.

"It has been agreed with Mr. Banks that the report to Building Admin. should include a study of alternative means of financing. It has been suggested that the three basic alternatives are:

"(1) normal financing by issue of bonds.

"(2) sale and leaseback arrangement similar to that used by OISE.

"(3) financing through use of pension fund monies. . .

"There are a number of legal questions to be clarified as well as the question of availability of funds on which I have already written to Messrs. Raney and Farmer. Would you please have Bob Cameron work with Treasury on the alternative methods of financing outlined above in order to ~~ascertain~~ ascertain which

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AA

(Mr. Shibley)

alternative might be most ^{beneficial} ~~beneficial~~ to us, particularly if tax advantages available to a builder or developer could be passed on to us."

Then, again, you got a memorandum in ~~response~~ ^{response} to that, from Mr. Cameron actually, instead of ~~from~~ ^{from} Mr. Gush, but of the same department ^{of} ~~of~~ October 6th, which, I think was ⁱⁿ ~~was~~ exhibit 19.

And then you, yourself, in exhibit 20 on October 21 did a memorandum within the month when everybody was sort of reporting in as to what you had been asked for. On ~~the~~ October 21, having earlier been negative in your August 18th report, you said—I am sorry, ^{exhibit} ~~exhibit~~ 20 is your analysis, yes. Now this is the memorandum in which you say at the end, "In summary, we feel that an examination of the OISE financing has thrown considerable doubt on the question whether a building self-financed and self-maintained is the most economical course for Hydro to follow.

"It is also established how difficult it could be to ensure at a particular point in time that the lowest-cost alternative is obtained. ^{In the end} ~~And yet~~ it may be that Treasury will wish to avoid ^a ~~a~~ direct loan and [^] ~~and~~ lease will be the most practical alternative."

Now, Mr. Dean, I am going to put it very bluntly to you, there appears to have been a great amount of activity on your part as at August 25th, which date I might say happens to coincide with the meeting on that day between Mr. Moog and Mr. Candy, very shortly after Mr. Moog's return from his visit to Switzerland with the Premier, and I want to know from you whether you received from anyone any form of ~~donation~~

~~it is not clear what can be done to ensure the~~

2551xxx3xfm112552 - 1 follows

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V.H.

(Mr. Shibley)

~~... and from the fact that you received from anyone any form~~
of communication which caused you to issue the series of memoranda in terms that I have read to you excerpts from at that time?

Mr. Dean: No.

Mr. Shibley: Well, what caused all of that? Are you saying it is ~~pure~~ coincidence that you issued that memorandum on August 25 or was there some other motivation for ~~that~~ that having taken place?

Mr. Dean: The longer answer to explain the events, I think, ~~is that~~ ^{is that} ~~Mr. Shibley~~, is this that ~~Mr. Shibley~~ saw Mr. Barry Brooks sometime in June with Mr. Smith at the request of Mr. Banks, who asked Jim Smith and I ^{to} visit them and to explore the question of lease financing ~~before~~ for a building to see if this had any savings at all for Hydro and was it a possible course of action for us.

~~Mr. Shibley~~ As a result of that meeting ^{and} and Mr. Cameron incidentally worked for Mr. Gush and both of them really reported to me, with Mr. Cameron through Mr. Gush ^{we} got Mr. Cameron after the meeting to prepare the two memoranda which appear July 16 and August 18. I guess the July 16 one really, although addressed to Jim Smith, came to me, I wasn't happy with it and I asked him to go back and do some more work. He replied August 18, very much as I will agree as you have asked him as well, very much more enthusiastically, which I attributed personally ~~to~~ to just the fact that Mr. Barry Brooks is a very enthusiastic supporter of Mr. Moog and he came back, in a sense, with the wrong answer. I wasn't looking for whether we should have Mr. Moog build the building, I was looking for financial answers to the question of whether lease financing was a method we could use ~~and~~ appropriately, whether or not Mr. Moog was the builder or related to the development at all.

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(Mr. Dean)

So far as I was concerned, August 18 didn't answer it.

Mr. Shibley: I am sorry. August 18 didn't what?

Mr. Dean: The memorandum from Mr. Cameron to Mr.

Smith didn't answer my basic question, which was, was lease financing the best method that Hydro could use for any building? At the same time, I would like to point out ^{that} almost since the consideration of the first head office building, we had been pushing ^{for} -- we had been complaining when I was in Treasury that we should use other ~~sources~~ ^{in the} sources of financing. So back of my mind, all the way through this, ^{is} that we should do a broader study of any alternative method, not just a lease financing arrangement, as has been done in the OISE financing, but any other sources, whether it was pension funds or anything else. So having received Mr. Cameron's letter of August 18, I wrote to Mr. Smith ---

Mr. Shibley: I must tell you. I don't ---

Mr. Dean: Can I just follow ^{through with this} because ---

Mr. Shibley: Will you give me a copy of the August 18 memo? I can't put my hand on it right now.

Mr. Genest: July 16?

Mr. Shibley: No. I think ---

Mr. Dean: ^{I'm sorry} July 26, I beg your pardon. I had - I thought I had the two Camerons, July 16 and July 26. The July 26 memorandum, I beg your pardon, from Cameron did not answer the question. It's not a document you haven't got Mr. Shibley!

So on August 18, I wrote to Jim Smith and I was getting quite a bit of pressure from my own staff that if we were going to get into the building business and really reconsider this, perhaps the study should be enlarged.

I wrote to Mr. Smith on August 18 saying ^{that} what Cameron had done so far hadn't convinced us on the lease-purchase method to date, that this lease-purchase offered the solution to all Hydro's problems and I guess the ^{end} last

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V.H.

(Mr Dean)

Let that letter is, please can we expand this study and to do a more complete study on all methods of financing. I think it is pure coincidence that the reply from Jim Smith to this, which was verbal, "yes, go ahead-do this" resulted in my immediately writing the three letters to the people I thought would need to give advice to me in preparing a memorandum. ~~The Treasurer in respect of~~

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~~... largely within the three letters to the people that~~
~~... would need to give advice to be in preparing a memorandum.~~

The Treasurer in respect of the bond issues and the question of
 availability of money. ^{to} Mr. Gush because Mr. Cameron reported ^{to} him
 and I wanted him to pursue further the study and broaden the study
 that he had done on his memorandum of July 6th and 26th; and to
 Barry, ~~... of course, to~~ clear the legal points, particularly
 those two I mentioned.

So relative to your question ^{as to} why I know, the reason
 I got going with these three memorandums was purely coming back
 from Jim Smith's acquiescence to go ahead with a broader study
 which really started with the first visit to Barry Brooks.

Mr. Shibley: Well, I'm looking at your memo to Mr.
 ... of August 15 and you say, ^{"As} you are aware, ^r I still
 feel that one of the least costly methods of financing the
~~... building~~ without disadvantage to either Hydro or its
~~employees~~ would be to arrange a loan through the
 pension fund. ~~It would~~ be possible to do some work on this as
 well as other alternative means of financing, ^{but} I would prefer
 to do it at a time when we had specific authority to go ahead
 alone or with other people to undertake a broad study into the
 whole question of a new building or not."

Mr. Dean: I....

Mr. Genest: Read on.

Mr. Shibley: "If you feel we should investigate such
 a study or proceed on our own, on a partial study, would you
 please let me know." Is that the study you are talking about?

Mr. Dean: I am saying, yes I asked for permission to
 do a study, whether it was on the terms of the total building,
 all aspects of it, whether it should be located on University
 Avenue and College or anywhere else or right outside the city,
 I certainly wanted permission to go ahead and do a more complete

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(Mr. Dean)

study of possible means of financing other than just the pure
method that had been used in the OISE deal.

Mr. Shibley: Mr. Dean, had Mr. Candy's memo of June 11
come to your attention? The memo wherein he said that he visited
with Mr. Moog, who said he was going to Europe with the Premier
as an advisor.

Mr. Dean: No I don't think I saw that memorandum
until this hearing started.

Mr. Shibley: Had you heard of the relationship or
friendship between the Premier and Mr. Moog?

Mr. Dean: No.

Mr. Shibley: During the summer of 1972?

Mr. Dean: NO, the first time I knew that, I think it
was December, ⁱⁿ thereabouts, 1971, when Mr. Candy first mentioned
any European financing that might be connected with a Canada
Square operation. I can't even remember now just how he
put that, ^{but} I think it came up really as a result of discussing
money costs. He mentioned that Mr. Moog had gone to Europe with
Mr. Davis, but I didn't know that there was any friendship even.
This is all that I had known, that he had done this. I wasn't
even sure if he had gone or not.

Mr. Shibley: I see, and that ~~was~~ your best recollection,
in December of 1971 you say?

Mr. Dean: Yes, I think this is the first time I got
any indication of an interest rate from Mr. Moog. Until that
time all we were basing our sort of numbers on if you like, was
the fact that Mr. Moog had financed the OISE building in the
United States, so I was tending to look at foreign exchange risks
and possibly the rate that might be appropriate in there as far
as any financing would be concerned.

Mr. Shibley: Can you be more explicit as to what MR.
Candy said about the fact that Mr. Moog had been Europe with the Premi

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Mr. Dean: NO, I'm afraid I can't. I t was sufficient to give me the feeling that there was a connection between Mr. Moog and Mr. Davis. Whether it was a friendship or ^a/_{business} deal I had no idea at all.

Mr. Shipley: Now what did he say to you on that same occasion with respect to the financing of the building?

~~Mr. Dean: As I say I think it came up in connection~~
with...

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H-2554-1

(Mr. Shibley)

~~all respect to the financing of the building.~~

Mr. Dean: As I say, I think it came up in connection with rates of financing, and this is why I have difficulty in remembering just when it came up. But all it was was a question of he thought Mr. Moog could obtain low rates of financing because he was considering access to the European markets, that's all.

Mr. Shibley: Now it is in evidence, Mr. Dean, that Mr. Moog showed Mr. Candy a prospectus of a Swiss bank or syndicate of Swiss banks in November of 1972.

Mr. Genest: 1971.

Mr. Shibley: 1971. Did Mr. Candy tell you about that?

Mr. Dean: No.

Mr. Shibley: Did he tell you that Mr. Moog had obtained information while in Europe with the Premier respecting financing for this building?

Mr. Dean: No.

Mr. Shibley: I'd like to establish what was the connection in the conversation between you and Mr. Candy in December of 1971 as it related in part to the financing for the building, and in part to the fact that the Premier and Mr. Moog had been in Europe sometime preceding?

Mr. Dean: Well, I am very unclear as to how it came up. I think, Mr. Shibley, I was quite aware of the questions you have asked and put to Mr. Cameron and to Mr. Candy and so on. And I have been, if you like, stretching my imagination to try and pin down when I first became aware of this. There is quite a long sort of period between June, 1971 and today. And that is the best recollection I can have of any relationship between the Premier and Mr. Moog, and ~~xxxxxxxxxxxxxxxxxxxx~~ the only way I can connect that is, and why I put it as December, is I was involved, I think, sometime during December with the first meeting with Zwig when I think it just came up when we were talking interest rates. Mr. Zwig happened to mention the trouble he was having finding money in Canada, and he was also one of the only people, I guess, that ever supported me in the idea of using the pension fund money. So it was in a general

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(Mr. Dean)

discussion on money, or money rates, and I can't pin it down any. I'm trying to, in other words, stretch a little bit even to pin it down that far.

Mr. Shibley: I see.

Mr. Dean: I certainly couldn't have been earlier than that because I have no recollection of even considering European money for a building like this, and getting the advantage of those rates at any time up to that time.

Mr. Shibley: I see. Was there a further occasion on which the subject came up?

Mr. Dean: Do you mean the friendship, or,---

Mr. Shibley: Yes.

Mr. Dean: No, I don't think so. My association, if you like, with this whole project has been kind of ~~xxx~~ off and on, ~~and~~ I didn't really, despite the April 10 memo, I was, from the time I... First of all, I went out of the country in December, 1971 for a while. When I came back, apart from the meeting with Mr. Zwig, I really had nothing to do with it, and I really didn't get involved again other than answering questions of my staff until this June 29 memo from Mr. Nastich.

Mr. Shibley: In that connection, I'd like exhibit 79 produced to you, which is your memorandum of July 6 to Mr. Nastich. Now I gather you ~~were~~ the person who was designated to do a review of the financial aspects of the transaction with Canada Square, in the interval between the two commission meetings of June 29 and June 12, the latter being a meeting at which they approved entering into negotiations. Is that correct?

Mr. Dean: That's right.

Mr. Shibley: And I notice that in exhibit 79 at page 3 of the appendix to that document you set out your conclusion there, and you say, I want to make sure I have got the right reference.

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~~_____~~ I'm sorry. It is on page 4 ~~_____~~

~~_____~~ of the memo itself, halfway down the page:

"In general it must be assumed at this stage" — now, you are talking July 5 6th — "that the following judgements are correct: (a) that it is preferable to finance the building through a lease-purchase arrangement than any other alternative available. (There is no possibility of our borrowing at Canada Square's seven per cent rate in Canada, and specific mortgage arrangements in our name would be complicated by our German borrowing arrangements. The difference which financing costs make to any rental rate must be recognized. The Canada Square proposal would look very different at different financing costs.)"

Now, do I take it then that as at July 6th when you were compiling this report on the instructions of the commission in that interval, that you were then of the understanding that Canada Square would be borrowing ~~at~~ seven per cent money?

Mr. Dean: Let me say first of all it was on Milan Nastich's instructions I was working on it.

Mr. Shibley: Yes.

Mr. Dean: ~~with~~ ^{with the answer} Mr. Mink to answers to these questions I think basically I worked with the April 10th report in order to prepare the whole of this document, so some of the numbers just flow through ^{from} that into this -

Mr. Shibley: Yes.

Mr. Dean: —And the rate used in the April 10th study was seven per cent which I agree is not all Swiss. It is an average of the Swiss financing and the U.S. financing.

Mr. Shibley: The fact of the matter, Mr. Dean, is that ~~_____~~ whatever Mr. Candy had said to you in December about European sources of funds was projected forward into your thinking as at the time you prepared the July 6th memorandum for the use of the commission. Is that correct?

Mr. Dean: Oh, yes, I think that ~~I was~~ the rate of seven per cent as I understand it, comes from the proposal of Canada

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(Mr. Dean)

Square, mixing up the two sources of financing.

Mr. Shibley: Yes, and ~~the decision was made~~ on July 6th, 1972, was the conversation you had had with Dandy in December of 1971 still in your mind when you prepared this?

Mr. Dean: I wouldn't think so specifically. At this stage I am preparing a document purely from the April 10th report and analysing it and trying to see where we should go from here.

Mr. Shibley: Well, this report, of course, again is ~~very~~ very favourably inclined towards the selection of Canada Square as the developer. Do you agree with that?

Mr. Dean: I would agree that I assumed ^{at that stage} that the decision was virtually made and that the possibility of going back and going to public tender or anything else was out the window, so ~~there~~ therefore let's just look at it as we go from here.

Mr. Shibley: Your earliest involvement with this project was when? Was it in the period of August of 1971 that we were reviewing ~~the~~ earlier?

Mr. Dean: No, as I mentioned, I think the earliest involvement was June, 1971, when ~~we met~~ Jim Smith and I met with Barry Brooks.

Mr. Shibley: Oh, you were one of the ones that went to see the building. You have been in this from the outset?

Mr. Dean: Yes.

Mr. Shibley: Is that correct?

Mr. Dean: Right.

Mr. Shibley: Mr. Dean, ~~with the~~ you say the first time that the relationship of friendship between the Premier and Mr. Hoag arose, as a matter of information to you was December of

Mr. Genest: Mr. Shibley, he didn't say "friendship." He said, there ~~is~~ some kind of association he didn't understand. It was either business or friendship.

Mr. Shibley: Thank you. ^{Ad} Right, there was some connection ^{there} in December of 1971. Is that right?

Mr. Dean: Yes, that's right.

Mr. Shibley: So, Mr. Candy had ~~not~~ ^{not} —

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Mr. Genest: With the ~~xx~~ caveats ^{that} ~~the~~ the witness himself gave, ~~he~~ he is not very sure about the time.

Mr. Shibley: I thought he was fairly...

Mr. Dean: Well, I said ~~that~~ that I did some searching of my mind ~~because of the~~ regard to the questions you had of the other witnesses.

Mr. Shibley: Yes.

Mr. Dean: —To search my mind to see if I can pinpoint a date, for I expected this question as to when it could have been, in December, ~~that~~ I related, as I said, to Mr. Zwig's meeting —I didn't see Mr. Candy very often on this sort of thing —

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(Mr. Dean)

~~...in my mind that it should have been in December, and I realized,~~
~~as I said, to Mr. Shibley's meeting, I didn't see Mr. Sandy~~
~~...on this sort of thing and I can't say that~~
pinpoint any relationship at all*.

Mr. Shibley: I see.

Mr. Walker: But it wasn't before that?

Mr. Dean: It certainly couldn't have been before that.
That's right.

Mr. Shibley: What position did Mr. Smith hold in August of 1971?

Mr. Dean: It's a difficult question to answer. Mr. Smith went off at about that time to ^{about} almost full time, for Task Force Hydro. So in that period he was in and out of the office. This is why the memorandum of Cameron ^{were coming} to him really ^{side} to me.

Mr. Shibley: Now, was there something that caused the responses to the two memoranda from Stewart and from Cameron, ~~as~~ and your own memorandum, all fell within the month of October, 1971, just prior to the month of November, when I don't ~~has~~ have to go through the whole resume of activity of that month. ~~Was~~ Was there some reason why in October of 1971, ~~as~~ you were, so to speak, ~~of~~ collecting ~~the~~ memoranda from the three other departments and also, preparing your own memorandum in ~~an~~ anticipation of some decision being taken in November of that year?

Mr. Dean: No, I don't think so, Mr. ~~Shibley~~ Shibley. I think ^{the} Mr. Cameron's letter of October ~~23rd~~ 6th was ^{one} I really was looking for. I think I pretty well knew the answers/I would get from the legal division and from the ~~the~~ Treasury.

Mr. Shibley: Well, you see, his is October 6th, ^{also} your own is October 21st, Stewart's is October 25th, and we now have the fact that Mr. Moog is telling Ames that he's expecting to pursue negotiations within the next few weeks to a final ~~conclusive~~ conclusion, or some wording to that effect. Now, I'd like to

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know whether anything was ~~a~~ said to you in or about October of 1971 which indicated that you ^{had} better have these memoranda collected because you were going forward towards a ~~met~~ meeting or meetings at which a decision might be taken, respecting ~~the~~ ^{the} head office building.

Mr. Dean: No, I think that when I wrote the letter to Mr. Sissons I was responding to Mr. Cameron's letter of October 6th, because as far as I was ~~concerned~~ concerned the maintenance cost, if you like, made a considerable difference to the ~~picture~~ picture of looking at a package deal like this. And I was also embarrassed that we had taken quite so long, ~~In~~ other words, it was ~~June~~ we went to see Barry Brooks with a ~~a~~ request to look into lease financing, and here it was in October before I was giving Mr. Sissons any indication at all as to our feelings about the lease financing or any other kind of deal, so I guess I was more embarrassed than anything ~~else~~ ^{about} the length of time we had taken.

Mr. Shibley: Mr. Dean, the ~~same~~ responsibility at the administrative level for this project really fell to Mr. Candy, yourself, Mr. Sissons, and then, at a more senior level, Mr. Gathercole. Is that so?

Mr. Dean: You could put it that way. Certainly, for the first six months, but I think that in the 1971 period, we pretty well worked independently, ~~In~~ other words, I didn't see Mr. Candy very often, there was very little communication between us at all, so that it was really just getting a request to do a specific job and replying to it, coupled with our own interest in doing ~~our~~ ^a ~~broader~~ study on financing, if we were going to go ahead with the building.

Mr. Shibley: Well, Mr. Dean you've sat through a good deal of ~~the~~ evidence before this committee, and you must be aware of the sense of collective effort, documentary and otherwise, which suggests that certainly no other developer than Canada Square was being given careful consideration by Hydro ~~and~~, I mean intense

H-2556-3

September 13, 1973
6:45 - 6:50 p.m.
B.G.

(Mr. Shibley)

consideration, until December of 1971. You are aware of that?

Mr. Deans: Yes.

Mr. Shibley: Are you aware of why the effort of ~~various~~ various people within Hydro during that period of time, ~~June~~ through to the end of November, was so concentrated in a direction of

(Tape H-2557 follows)

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6.50-6.55p.m.
B.A.

H-2557-1

(Mr. Shibley)

~~to the end of November was so concentrated in the direction of~~
~~xx~~ favouring Canada Square as the developer to be selected
for the project?

Mr. Dean: No, I have no idea at all. IN fact, I think I was quite surprised to get such quick response from Mr. Sissons to my letter of October 26.

Mr. Shibley: And later, when other developers were asked to make submissions in December and January, were you aware that Mr. Candy sort of made ^a ~~memor~~ of February 1 saying we should select ~~xxx~~ Canada Square? Were you aware of that?

Mr. Dean: Not at February 1, no.

Mr. Shibley: Did you become aware during the period after January 24 of the fact that once again, the whole effort seemed to be directed towards following up with Canada Square but not with any other developer?

Mr. Dean: No, I don't think I was connected closely enough for that, Mr. Shibley. As I say, I pretty well went out of it after the meeting with Mr. Swig. ~~xxxxxx~~
I think my November memorandum to Mr. Banks indicated that ~~the~~ ^{it} ~~xxxxxx~~ ^{the finance branch} wouldn't be necessary for ~~us~~ to be involved until such time as we had had proposals ~~xxx~~ and then we would be involved in the assessment ~~xxx~~ So I guess, if anything, I was surprised that during January and February, at least, ⁺ "that the proposals must be in. I wonder why we are not being involved," but I never pursued the point or asked anybody about it.

Mr. Shibley: Mr. Dean, I am not going to ask you about any detail of the various memoranda that were prepared at the financial end, but in general terms, I want to put this to you: Is it not correct that, in very large measure, the financial data and the conclusions of a financial nature which form part of that April 10 memorandum were predicated upon figures for which you had not then any foundation in fact, in the sense of

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B.A.

(Mr. Shibley)

having asked for the financial information from three of the developers affected?

Mr. DEan: I don't know that that is a fair question to me frankly, Mr. Shibley, because I wasn't involved in the preparation of the April 10 memorandum. I think that I reviewed that afterwards very quickly. I understood there was a meeting with me and Mr. Nastich, and Mr. Mink and Mr. Gordon, but I don't remember that one, quite frankly.

Mr. Shibley: Have you since examined the April 10 report?

Mr. DEan: Yes.

And have you any comment to make upon the information therein contained as to its accuracy?

Mr. Genest: I object to that question, Mr. Chairman.

I again, he is asking a witness to pass judgment which is one for the committee to make and it puts Mr. Dean in an invidious position, ~~and~~ I don't think it is fair.

Mr. Shibley: Let me put the question another way:

Do you recognize that the evaluations made of a financial nature in that report are based upon assumptions?

Mr. Genest: I have the same objection. I don't think Mr. DEan should be placed in ^{the} position of being an expert to pass judgment in light of his current knowledge, ~~or~~ knowledge acquired at the time and after this enquiry started. You supported me, Mr. Chairman, with Mr. Nastich, and I think this is the same kind of ~~of~~

Mr. Bullbrook: I support Mr. Genest, I want you to know, Mr. Chairman.

Mr. Shibley: Well, I won't pursue it.

Mr. Chairman: I thought there was a distinction on it but...

Mr. Shibley: I withdraw the question.

Mr. Genest: Thank you, Mr. ~~Chairman~~ Shibley

Mr. Chairman: I was only supporting you here because your wife was here.

(H-2558 follows)

Sep 13, 1973
6:55-7:00 pm
V.H.

(Mr. Shibley)

~~I am not~~ I withdraw the question.

Mr. Genest: Thank you, Mr. Shibley.

Mr. Shibley: I have no further ~~more~~

Mr. Chairman: I was only supporting you here before because your wife was here!

Mr. Shibley: I have no further questions of Mr. Dean.

Mr. Chairman: Yes, Mr. Hodgson.

Mr. Genest: ^{you would have had her} ~~was~~ here all summer! ~~more~~ ^{keeping her} than waiting outside, I'll tell you! ^{Mr. Chairman: It would have been better}

Mr. R.G. Hodgson: Mr. Dean, you said that Mr. Zwig had supported you with the idea of using pension funds in December of 1971. You must have mentioned the possibility ^{here were funds} ~~that~~

Mr. Dean: ^{Is there} No, funnily enough, he mentioned it. He said, "a possibility of using the pension fund?"

Mr. R.G. Hodgson: Did you ever discuss it with Mr. Moog? The possibility of using the pension funds ^{being around?} ~~being around?~~

Mr. Dean: No. I never met Mr. Moog until this hearing started.

Mr. R.G. Hodgson: And yet he made a memo, I believe. Mr. Shibley, would you assist me here? I believe Mr. Moog had a memo and in his memo he mentioned "John (Beard) Dean".

Mr. Genest: No, that was Mr. McCallum.

Mr. R. G. Hodgson: Mr. McCallum? Oh, I am sorry. That really threw me. My train of thinking is ~~gone~~ gone.

Mr. Genest: Mr. McCallum's memorandum.

Mr. R.G. Hodgson: Well, I think I have explored all the questions I wanted to.

Mr. Shibley: ^{I have a feeling that is} Mr. McCallum's ^{mode of} ~~native~~ identifying someone he has only just met once.

^{Mr. Genest: That's right.}
Mr. R.G. Hodgson: Well, I guess I got involved with thinking of Mr. Moog when he came back with ^a ~~a~~ beard! ^{That's} all I wanted to ask.

Mr. Chairman: Any other members of the committee have any questions of Mr. Dean?

Mr. Dean, thank you very much. ^{Mr.}

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V.H.

Mr. Shibley: That's what I call self-restraint!

Mr. Chairman: Mr. Coles has asked me to note that on page 11A I am sorry, page 2453-1 of Hansard of yesterday's date in regard to the dates when the agreements were signed, there are three references to the month of July. He tells me they should read October. Mr. Jenkins of Hansard checked them out on the tapes; they do read July as are printed, but I think we will agree to change them to the month of October, that is that is correct. Any question on that? Mr. Shibley agrees with Mr. Coles that they should read October.

Mr. Shibley: Yes.

Mr. Chairman: So I have noted that on the record.

Mr. Deans: Why don't you just call the next witness and get it over with?

~~XXXXXXXX~~

Mr. Chairmah: I think we are going to be a little longer with the next witness but thank you all for your patience this evening. It's late and you have been good to stay with us without your stomachs upsetting the microphones. We are adjourned until 10 a.m. tomorrow morning.

The committee adjourned at 6:58 o'clock p.m.

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<u>Exhibit</u>	<u>Page</u>	<u>Description</u>
235	2519-2	Ontario Hydro cost comparison - Present accommodation and new building in 1985.
236	2529-2	Estimated annual cash flow for Canada Square Corporation Ltd.

APPENDICES

Committee members:

J.N. Allan

J.E. Bullbrook

I. Deans

M. Gaunt

L.C. Henderson

R.G. Hodgson

W. Hodgson

J.P. MacBeth (Chairman)

W. Newman

J.A. Renwick

G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC

James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC

Gregory Rice

G.D. Finlayson, QC

Assistant general manager, finance,
Ontario Hydro:

Milan Nastich

Economist, finance branch, Ontario Hydro:

Peter Lamb

Manager, financial policy analysis,
Ontario Hydro:

John Dean

List of exhibits introduced during this sitting
appears on the next page.

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FINANCES

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J.E. Bullbrook

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LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Friday, September 14, 1973

Morning session

2559-2583

Sep. 14/73
10.32 to 10.35 am
fvk

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The Committee met at 10:32 o'clock, a.m.

Mr. Chairman: Ladies and gentlemen, I ask the committee to come to order. The delay has been caused by some preparation of the evidence which, I think, is now in the form that Mr. Shibley wishes to present it and I apologize for that delay. I am asking the press if they would pay attention for a few minutes to a very brief remark. The evidence that will come forth today is all part of one package and the result, or the final conclusion on the evidence, should not be jumped to without the explanations that go along with it. So, I'm asking the press not to make any assumptions from any statements or evidence that comes out early in the proceedings until all of the evidence of our witnesses has been heard and that counsel for Hydro and for Canada Square have a chance to make their comments on it. Its expert witness, in one sense; the way it has been arrived at could be classified as an opinion. Two or three experts may attack it from a different angle. So, I'm asking you not to make any sensationalism out of the evidence until— well, I hope you won't make anything sensational out of it at any time — but I'm asking you to draw your own conclusions, sensational or otherwise, after you've heard all of the evidence.

Mr. Gaunt: Don't get sensational too soon.

Mr. Renwick: *Make it -* ~~This is sensational when you've not all~~ *the sensational stuff*

Mr. Chairman: *Anson -* Now, Mr. Cartwright, I heard Mr. Renwick refer to you this morning. He was pleased to meet you because he thought you were a computer, but, in any event, welcome to the committee. We've heard your name mentioned, I think, about the first day of our proceedings and ~~and~~ *we* we've all heard that you've been working in ^a ~~the~~ back room someplace preparing figures and I now understand you are prepared to give us the findings under oath.

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fvk

(Mr. Chairman)

Is that right?

Mr. ~~Carl~~ Anson-Cartwright: I am sir. Thank you very much for your welcome.

RONALD ^{Mr.} ANSON-CARTWRIGHT, Sworn

Mr. Chairman: Mr. Shibley.

Mr. Shibley: Mr. Anson-Cartwright, I'd like to just review your qualifications with this committee. I understand that you are a partner in the firm of Price, Waterhouse and Co.

Mr. Anson-Cartwright: That is so.

Mr. Shibley: And that firm is one of the largest firms of professional accountants in Canada, as well as having offices throughout the world. Is that correct?

Mr. Anson-Cartwright: I think that's so. I think other people might dispute the "one of the largest" but I would say it's one of the largest ^a well-known firms.

Mr. Shibley: Yes. I understand also that you have been made a fellow of the Institute of Canadian Chartered Accountants. Is that correct?

(Tape H-2560 follows)

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M.R.

~~Mr. Shibley~~

~~...I understand also that you have been made a Fellow of the Institute of Canadian Chartered Accountants. Is that correct?~~

Mr. Anson-Cartwright: A Fellow of the Institute of Chartered Accountants of Ontario, ~~Yes~~.

Mr. Shibley: Yes. And that is a distinction, if I may say, afforded to ...

Mr. Genest: It's like a Q.C.

Mr. Shibley: Well, I wonder about that, sometimes.

Mr. Anson-Carwright: If you might leave the analogy there.

Mr. Shibley: Do you have to work towards that fellowship?

Mr. Anson-Cartwright: No, it's a recognition by fellow practitioners, fellow CAs, of service to the profession.

Mr. Shibley: Yes. Now, then, I understand that you are also chairman of the Tax Committee of the Ontario Institute of Chartered Accountants. Is that correct?

Mr. Anson-Cartwright: That's right.

Mr. Shibley: And the responsibilities of that committee of which you are chairman are what?

Mr. Anson-Cartwright: Well, basically to make briefs to governments about tax matters. We intend to make a brief, for example, to the Ontario Government shortly. We have input into a joint brief by the ^{Canadian} ~~Canada~~ Bar Association and the Canadian Institute of Chartered Accountants to the ministers of finance and national revenue, really dealing with technical questions concerning tax matters.

Mr. Shibley: I understand that you are also a lecturer at ~~the~~ York University in Toronto in the field of taxation?

Mr. Anson-Cartwright: Yes. I lecture at Osgoode Hall in the third year on tax policy.

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Mr. Shibley: Yes. You lecture law students on tax policy?

Mr. Anson-Cartwright: That's right.

Mr. Shibley: Now, then, have you also been called upon to give expert evidence for the Department of National Revenue in tax cases?

Mr. Anson-Cartwright: Yes, I have on three or four occasions, basically in the area of tax matters and evaluations.

Mr. Shibley: Yes. Now, then, with respect to the matter of real estate transactions and particularly lease-back transactions, have you had experience with respect to that type of transaction?

Mr. Anson-Cartwright: I've had experience with respect to both categories, real estate transactions and leases. I have, for example, I advised one client who has real estate in and around Metropolitan Toronto, very substantial real estate.

Mr. Shibley: Yes. And have you - ~~are~~ are these large transactions you are talking about?

Mr. Anson-Cartwright: Very large transactions. Total portfolio of this one particular client would be in the order of ^{million} \$60 to \$70 million ~~dollars~~.

Mr. Shibley: Yes. And are some transactions that you have dealt with of the lease-back nature?

Mr. Anson-Cartwright: Yes, I have dealt with lease-back transactions for some of our large corporate clients.

Mr. Shibley: Yes. Have you also acted for developers —

Mr. Anson-Cartwright: Oh, yes.

Mr. Shibley: ...on large transactions?

Mr. Anson-Cartwright: Well, let me say that our firm has a number of developer clients and I have assisted in advising them.

Mr. Shibley: Your firm is in no way connected with any firm that either made a submission respecting the Hydro head office building or considered making one? Is that correct?

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Mr. Anson-Cartwright: Not to the best of my knowledge.

Mr. Shibley: Now, then, before we get to the substance of your report, Mr. Anson-Cartwright —

Mr. Genest: Mr. Shibley, I'm sorry to interrupt. I don't want to prolong it or make your task more difficult, but ^{as} some of these matters come up, I wonder if it might be — I have a couple of questions on the qualifications and I wonder if it might not be more convenient as we are dealing with subject matter that I ~~raise them~~ raise them, ~~and~~ I just with your permission, Mr. Chairman, I would like —

Mr. Chairman: Yes, well, proceed. I don't want a lot of ~~interruptions~~ *interruptions* —

Mr. Genest: I just wanted a little more detail about the developer experience ~~and~~ of Mr. Anson-Cartwright and whether he had actually acted or been a principal or a principal adviser in the negotiation of a development transaction ^{on the} ~~from~~ a developer's side.

~~Mr. Chairman: Mr. Anson-Cartwright, these questions are coming from me. It makes it a little awkward when you've got to listen from behind rather than from in front, but what you're~~

(Mr. Genest)

~~Mr. Chairman: Mr. Cartwright, these questions are coming from me. It makes it a little awkward when you have got to listen from behind rather than in front, but what you are doing is fine there, if you will just take the next few questions^{as} coming from me.~~

Mr. Anson-Cartwright: Yes, I have actually advised developer clients, Mr. Genest. I was really one of the ones who assisted in the setting up of what is now a very large development company and I have advised them for a number of years on actual transactions as well.

Mr. Genest: And have you been involved in the negotiation process?

Mr. Anson-Cartwright: Yes.

Mr. Genest: With the client.

Mr. Anson-Cartwright: Yes.

Mr. Genest: On deals?

Mr. Anson-Cartwright: On deals, yes.

Mr. Genest: That is all I have for now, Mr. Chairman.

Mr. Renwick: Mr. Chairman, perhaps Mr. Shibley, so that the record would be perfectly clear on it, would ~~distinguish~~ distinguish Mr. Anson-Cartwright from other witnesses who have appeared and make it perfectly clear that he is retained on behalf of the committee, and also characterize the nature of Anson-Cartwright as a witness here.

Mr. Shibley: The committee will remember that at one point I requested the authority of the committee to retain Mr. Anson-Cartwright as an expert, and that authority was given. Mr. Anson-Cartwright, I take it, that as per the face page of your report, your retainer respecting your report and your attendance here to give evidence is a retainer treated by you as one from this committee.

Mr. Anson-Cartwright: I regard myself as trying to provide input regarding the transactions specifically for the committee members.

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10:40-10:45 am
PLG

Mr. Shibley: Yes, and in that respect, were you instructed to approach the matter on the basis of the evidence tendered to this committee of a financial, economic or other nature, respecting the transaction, ~~w~~ as well as to bring to bear on ~~this~~ the subject of your report, your own expertise?

Mr. Anson-Cartwright: Yes. I think that at the inception of this committee you had a memorandum of -- I seem to recall there were six specific questions and in my report I tried to deal with questions one and three which ~~were~~^{are} basically are the terms of the agreement financially and economically sound, and the other question was, did Hydro take all necessary steps to obtain competitive proposals. In addition, I tried to, during the course of these~~m~~ proceedings, to analyze all financial matters that came to my attention through scanning Hansard.

Mr. Shibley: Now did you also have ~~u~~

Mr. Walker: One point Mr. Chairman, your point #3, I am not sure I gather the significance or the connection between your involvement in it and our rough guideline, whether Hydro took all the necessary steps. Can you elaborate on that?

Mr. Genest: I should make my position clear on that Mr. Chairman, I have some ~~quasi~~ questions to raise on the line as to -- and this is no attack on Mr. Anson-Cartwright, but as to his qualifications to make a judgment in that area on question 3. I will have some submissions when we come to that, but I wanted this caveat put in.

Mr. Shibley: Well then Mr. Anson-Cartwright, did you have meetings with representatives of Hydro from time to time, respecting the preparation of your report?

Mr. Anson-Cartwright: Yes, I had three meetings with representatives of Ontario Hydro, one earlier on in the stage in the course of these proceedings ~~with me~~ in Mr. Nastich's office with Mr. McCallum present, Mr. Dean and Mr. Lamb I believe. I also met on another occasion, again in Mr. Nastich's office, and I believe there was present Mr. Lamb, Mr. Nastich, I don't think Mr. McCallum was present at that particular occasion, and a

(Mr. Anson-Cartwright)

~~I don't think that Mr. McCallum was present at that particular~~
~~session, and~~ a couple of other representatives of Hydro ~~was~~
in the financial area.

In addition, I think, on Wednesday of this week, I met with MR. Nastich and we went over my draft report in some detail. We spent the afternoon together.

Mr. Shibley: And in the course of that afternoon discussion, did you and he discuss the factual premises upon which your report was founded?

Mr. Anson-Cartwright: Yes, I'd say the purpose— what I gathered to be the purpose of the meeting— was to ensure that my report was financially sound—pardon me, was factually sound— from Hydro's viewpoint.

Mr. Shibley: Yes. And did you incorporate any of the ~~the~~ suggested changes that Mr. Nastich had?

Mr. Anson-Cartwright: Mr. Nastich had a few changes to suggest and I did incorporate them, in fact, in the report, yes.

Mr. Genest: Did he incorporate all the changes suggested by Mr. Nastich, because I don't understand that to be the case?

Mr. Anson-Cartwright: Yes, I did incorporate all of the factual changes that he had suggested, in addition to comments that he had made. For MR. Genest's benefit, I did not make one change that Mr. Nastich had suggested, and that was in the structure of my report, ^a and I didn't really regard that as a change per se. I think it's my function to structure my report in the manner that I think is the proper presentation for this committee.

Mr. Bullbrook: I wanted to clarify one thing if I may. I don't regard this report as a judgement on the part of Mr. Anson-Cartwright, but rather his opinion, as an expert, given to me, upon which I will form a judgement.

MR. Anson-Cartwright: That's the way I had certainly hoped that the Committee would take my report.

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JLP

Mr. Bullbrook: If Mr. Genest takes issue with the factual situation, I certainly would understand his position. But I just wanted to clarify it.

Mr. Genest: Don't read anything sinister in my remarks, Mr. Bullbrook.

Mr. Bullbrook: No, I just want to relieve you of the burden of having to object to—as Mr. Walker seemed to do, understandably because of the phrasing—to whether this witness is coming to a conclusion for us. He is not, as far as I am concerned. He is giving me his expert opinion.

Mr. Chairman: That is the position I take in regard to it, Mr. Bullbrook.

Mr. Walker: My question, Mr. Chairman, was more related to question 3 in the Terms of Reference that we adopted ourselves. Did Hydro take all steps necessary to obtain competitive proposals? And I really wasn't sure how Mr. ^{Anson-Cartwright} ~~Cartwright~~ fitted into that particular slot. I can certainly see number one, and more power to you to bring it forward and let's see what you have to say. But I'm wondering what you have to do with respect to number three.

Mr. Shibley: I think it will be clear to you.

Mr. Walker: Well, I'm answering Mr. Bullbrook's comment on my comment.

Mr. Chairman: Well gentlemen, I -

Mr. Genest: LET'S WAIT UNTIL WE GET TO IT.

Mr. Chairman: YES, THAT WAS THE POINT I was going to make. I think if you'll let the evidence proceed, the Committee, I am sure, will attempt to be fair to all the points of view that want to be put forward either by Canada Square or Hydro. But, with ^{the} ~~the~~ warning I have given the press, I think maybe ~~side to the~~ we can let Mr. Shibley proceed without too many interruptions.

Mr. W. Newman: Mr. Chairman, I presume ^{he is} ~~we are~~ going to pursue this. He asked Mr. Anson-Cartwright if he had consultation with Hydro. I'd like to know if he had consultation with Canada Square people, or he had consultation with our counsel on this matter too.

Mr. Chairman: I don't know about Canada Square.

Mr. Shibley: Would you care to comment on either?

MR. Anson-Cartwright: I have had no communication with Canada Square whatsoever. The second point you raised, ^{by} ~~the~~ "counsel" ^{were you} meaning Mr. Shibley?

Mr. W. Newman: Yes.

Mr. Anson-Cartwright: Since May, I think May 15 or May 11, I was appointed as an advisor in this matter. I have met with Mr. Shibley, I would say, for a maximum of four hours. I have had two brief discussions with him in his office, and ~~and~~ some little while ago, and in the last two days I have met with him to discuss this matter.

Mr. Shibley: Just in that latter connection, Mr. Anson-Cartwright, was most of my discussion with you subsequent, in point of time, to the draft report which was provided to me, and I might say, almost simultaneously, to Hydro on Wednesday of this week?

Mr. Anson-Cartwright: That's right.

(Tape H-2 53 follows)

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10:50 - 10:55 a.m.
D.L.

~~Mr. Shibley: I might tell the members of this~~
~~Committee that I received the draft material late Tuesday.~~
~~I didn't read it myself until Wednesday morning, early.~~
~~I had a meeting with Mr. Anson-Cartwright at 8:00 o'clock~~
~~Wednesday morning. I called Mr. Nastich and gave him~~
~~the self-same material as had been handed to me and that day~~
~~so that he might have the morning to review it in anticipation~~
~~of his afternoon session with Mr. Anson-Cartwright. Prior~~
~~to the~~ I'm sorry go ahead.

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so that he might have the morning to review it in anticipation
of his afternoon session with Mr. Anson-Cartwright. Prior
to the ^A I'm sorry go ahead.

Mr. Anson-Cartwright: I guess you were with me at
a meeting with Hydro officials and if you are counting time
you were probably with me another hour or so.

Mr. Shibley: Well, that was the first meeting only.

Mr. Anson-Cartwright: That's right.

Mr. Shibley: You went to the second meeting alone,
I believe.

Mr. Anson-Cartwright: Right.

Mr. Shibley: The amount of communication between you
and I prior to Wednesday of this week was, what?

Mr. Anson-Cartwright: You've just been too damned
busy so it has been almost negligible.

Mr. Shibley: All right.

Mr. Anson-Cartwright: In other words I've had to go
it alone.

Mr. Shibley: All right. On the other hand Mr. Bell
has been providing you with the exhibits as they have been

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D.L.

(Mr. Shibley)

received. *Is that correct?*

Mr. Anson-Cartwright: That's right. I've been receiving exhibits daily.

Mr. Shibley: And in particular he has ~~been~~ provided ~~to~~ you with the files of the four developers who made their submissions?

Mr. Anson-Cartwright: Yes.

Mr. Shibley: Including all their work-up material such as it was contained in those files. Is that correct?

Mr. Anson-Cartwright: I've seen what has been provided, what has been provided to me has been files from the various developers. I wouldn't say they were necessarily complete in every case, but I have —

Mr. Chairman: You're not suggesting that there is evidence that we haven't seen yet, are you?

Mr. Renwick: But you've seen everything that we have.

Mr. Anson-Cartwright: I have seen everything that you have seen, let me put it that way, Mr. ~~Renwick~~ *MacBeth*.

Mr. Shibley: And you mentioned ~~that~~ scanning a transcript, *Do* I take it you have attempted to receive input from that source as to matters financial and economical?

Mr. Anson-Cartwright: Yes, I don't think I would be doing my duty if I didn't scan ~~the~~ Hansard to ascertain if there is material of a financial nature that I should be taking into ~~any~~ consideration, both from the developers' viewpoint and Hydro's viewpoint. If I had to read all of the commentary, well I started doing that and that was what I called a sure cure for insomnia.

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Mr. Shibley: But as far as evidence of people from Canada Square, the other developers, you have attempted to glean from Mansard any input that they had to make respecting their approach to the questions that you were trying to ~~analyze~~.

Mr. Anson-Cartwright: That's right.

Mr. Shibley: Now then before going to your report and so as not to put it out of perspective, I want to put it to you, Mr. Anson-Cartwright, that whatever may be disclosed in terms of your report as being benefits to the developer, the benefits to any one of the developers that who Hydro might have dealt would be something ~~rate~~able to the same benefits as outlined in your report. Is that so?

Mr. Anson-Cartwright: I think that's so, yes.

Mr. Shibley: And it really becomes a question of whether Hydro measured those benefits properly and obtained the kind of advantage in a rental rate that it should have obtained, having regard for the benefits ~~available~~ available to any developer with whom it might have dealt.

Mr. Anson-Cartwright: I think that's so. I think that this type of lease-purchase transaction could be good for both sides.

Mr. Shibley: Yes.

Mr. Anson-Cartwright: In my report I have indicated, as we will see, the magnitude of benefits ~~for~~ which could accrue to the developer.

Mr. Shibley: Yes.

Mr. Anson-Cartwright: I would also add that there could be benefits that are accruing to Hydro. I've not been asked to assess those per se.

Mr. Shibley: Right.

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Mr. Anson-Cartwright: *And I think,*

~~was~~ the real question then is: "Did Hydro, in fact, get the share in the benefits of the developer?" ^{I think} ~~that's the best~~ way I could express it, or were there too many benefits left behind? And that's what I've been trying to analyse through the data and, of course, I wouldn't want to usurp the committee's function. They really have to take into account what I have said and make their own judgement.

Mr. Shibley: In compiling the ^{data} ~~data~~ you, of course, have also had the benefit of a computer programme available within your firm? *Is that correct?*

Mr. Anson-Cartwright: We prepared a programme specifically for this.

Mr. Shibley: Did you find that similar computer programming had been done by any of the other developers from the material provided to you?

Mr. Anson-Cartwright: Yes, one of the other developers had prepared a similar computer programme. ^{Shibley} Two of the developers actually had computer programmes.

Mr. Shibley: Who were they?

Mr. Anson-Cartwright: Ellis-Don and ^{and} Y&R Properties.

Mr. Shibley: ~~Now~~ Mr. Chairman, the manner in which I want to deal with the report itself is as follows: I intend that the report be made an exhibit and distributed only to counsel and to members of the committee in the first instance as I have completed my examination of any given page of the report, and, only then, will that page of the report be provided to the press so that there will be no misunderstanding as to the meaning of what is contained on any given page and the benefit of the explanation of the witness will be a matter of record by that point of time. *Now I ask whether that meets with the concurrence of yourself —*

Mr. Bullbrook: Mr. Shibley, I'm not happy about that at all. How do we expect the press to understand what's going on if they don't have the material in front of them and convey to the public an appropriate understanding of it?

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Mr. Chairman: You suggest that after we have dealt with a page -

Mr. Shibley: Just as we did with Mr. McCallum's file, for example; you had the whole file but as we dealt with a page it was ~~then~~ distributed. I must say there is a distinction, and I think it's the one you're thinking about, In the case of Mr. McCallum's file, we gave the press the page as we were dealing with it. As a further precaution, [^] and I grant what you say is so, that it will be more difficult for them to follow the oral testimony if they don't have the page in front of them while we're dealing with the testimony, I'm in your hands on that score.

Mr. Bullbrook: I take it that your concern, Mr. Shibley, is that there might be a reporting on a page, an individual page, which would be factually not sound. I want to ~~say~~ say that my particular attitude would be that, on the balance of abilities there, that I'd be inclined in favour of giving it to the press so that they would be able to follow it more clearly and understand it and report it more accurately.

Mr. Chairman: That would be my thought on a page by page basis that the press might have it at the same time as we're doing it. I don't know how much is on any page, but it's ~~so~~ difficult for anybody to follow figures if they haven't got them before them. What I was really concerned about is the press getting it and looking at the last page and saying: "Ha, ha", and running off to the telephone, or a ^{private} ~~civilian radio~~ ^{radio}.

Mr. Shibley: The intention is then that they have the page as we're dealing with it?

Mr. Chairman: I'm ready to hear from Mr. Genest and Mr. Finlayson, [^] in fact, anybody [^] but I would think that the press, in fairness, should have them as we come to them.

Mr. Deans: Mr. Chairman, I would like to, before Mr. Genest says anything, [^] I think that we should follow the suggestion that you have made, that Mr. Bullbrook is obviously in support of. There is a certain amount of trust involved. I would prefer that they would be given the item being dealt with

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in order that they can follow it through with the committee. I don't know what the report looks like, or how it's drafted, so it is very difficult for me to determine whether a page is necessarily the right way to do it. I would have thought that if we were going to deal with a particular topic and we're going to follow that topic through to its conclusion, ~~we should~~

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(Mr. Deans)

~~the right way to do it.~~ I would have thought that if we are going to deal with a particular topic and we are going to follow that topic through to its conclusion that the press should be able to follow it along with the committee, ~~we~~ have to trust their good judgment to report accurately what the evidence is as opposed to what simply appears in print. And we may, ^{and} Mr. Snibley may, because of certain headline writers, be a little wary of what the headline might report. I don't think that ...

Mr. Chairman: Well, I would agree. Now, anybody that is contrary to that—Mr. Genest.

Mr. Genest: Mr. Chairman, my basic position is that the report itself until the witness has gone through it should really not be evidence. I'm very fearful of the report just being entered holus-bolus in advance as an exhibit for several reasons.

On Some counts I propose to—we disagree fundamentally with some of the assumptions made by Mr. Anson-Cartwright. And I say this with all due respect to him. He's giving an expert opinion in areas of controversy.

In other facets of this report, for instance, one dealing with a third question as to ~~the competitive~~ whether hydro took the competitive steps. I have some submissions to make about whether or not it is proper at all to receive expert evidence on that subject and whether this witness is qualified to give opinion evidence on that subject.

There are statements in the report that if the assumptions on which they are based are ~~and~~ not clearly explained and the controversy that exists about them ~~is~~ not clearly explained, conclusions could be drawn, as somebody said, by a headline writer which are in my submission, quite unjustified.

And I'm very fearful of having this, again, this is not only—I know that you are concerned with your investigation but you've got to bear in mind the realities of the situation,

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that the public is following this and that the public sees what ~~the~~^{it} reads in the paper which could be very damaging to Hydro when it all comes out ^{and} it shouldn't really have been that way.

We've had that experience before many times in this hearing. So I'm extremely concerned that for a slight inconvenience to the press ~~we~~ we could cause great damage. You see, the legal position is—I don't want to be legalistic in front of this committee—but the legal position is that you don't file reports. What courts ^{hear} ~~hear~~ what tribunals ^{hear} ~~hear~~ is ~~the~~^{hear} is evidence, sworn evidence of a witness, ^a and ~~a~~ a report ~~made~~ at the end, if it covers everything that he said, for the sake of convenience may be filed, but the evidence is what the witness says here under oath.

Mr. Bullbrook: We understand that fully. I just—

Mr. Genest: Mr. Bullbrook, you are a lawyer and—

Mr. Bullbrook: Mr. Genest should not ^a ~~wonder~~ through the misapprehension that I think the report is the evidence because the report isn't the evidence. What he swears to under oath is the evidence. I would want you to know that, sir, fully.

Mr. Genest: Mr. Chairman, you see, it's an exhibit. It becomes an exhibit under your counsel, Mr. Bullbrook.

Mr. Bullbrook: Well, as far as the exhibit, that doesn't cause me any concern. Basically we will weigh the import of that exhibit as we've weighed the import of every other exhibit.

Mr. Chairman: I hope we don't have to accept every exhibit we've had on its face value.

Mr. Walker: Are we going to have both, Mr. Chairman? Are we going to have both the report and then word by word what the report says?

Mr. Chairman: Well, I'm not so sure it will cover every sentence in the report. I haven't seen the report but

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Generally speaking I think you're going over page by page.

Mr. Walker: Well, what are we talking about

~~the~~ report for if we are going to go through it word by word anyway? The report ultimately becomes the actual transcript.

Mr. Shibley: Well, Mr. Chairman, if I may so,

I was asked, I think in discussion with yourself and some of the committee, to attempt to telescope this witness's evidence.

I passed along instructions to Mr. Anson-Cartwright that this committee was looking for a written report from the committee because this is what the committee instructed me in turn to instruct him ~~and~~

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(Mr. Shibley)

~~the Committee has not yet received a written report from the~~
~~Committee because this Committee has not yet received a written~~
~~report to instruct him to do.~~ And that in that report, in a
summary way, outline what his outline of facts was, what his
opinions were, and to be as concise as possible so that we might,
without a lot of elaboration, going on for days of evidence, get
the same thing, as I say, orally.

I think the report will have - first of all, let me
say that any court of law would accept this report as an exhibit. I
don't agree with Mr. Genest - provided, of course, that the
court will take it and weigh it as to how much of the report is
going to be acted upon or accepted, against the background of
the testimony of the witness as tested.

Secondly, I must say that my intention is for us to
go through the report with Mr. Anson-Cartwright, and, where it
needs elaboration or explanation, or where an issue respecting a
statement in the report has been drawn to my attention by counsel
for Hydro, as he has done, I intend to immediately alert the Com-
mittee to the fact that Hydro has raised an issue as to the
correctness of the assumption, and then have the witness submit
to examination in that area.

I have invited counsel for Canada Square and HYDRO to
submit to me questions in writing. They haven't done so, but I
have had the benefit of conversations with MR. Genest in particular.

As we go through the day, anything that they want to
ask about as part of the report, which they have had literally
short of two hours, as long as I've had it, then I am prepared to
have the witness's report tested so to speak, by examination first
by me and any ancillary questions by others.

But I think it would be frivolous to throw away the
benefit of the consolidation of his material, prepared, as I say,
on the instructions of the Committee.

Mr. Chairman . He knows. This I'll leave to you, Mr. Anson-Cartwright.

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Mr. Renwick: Mr. Chairman, at the risk of a little bit of awkwardness and inconvenience to me as a member of the Committee, I would be inclined to think that we, as members of the Committee, should suffer the same awkwardness and inconvenience that the members of the press do, and that we should not be given the whole report.

Mr. Renwick: Now this may sound awkward, but I have two reasons for doing it. The press are the representatives of the public; this is a public inquiry, and this is a very essential and important part of it. Secondly, experience has shown, and I think all of the members of the Committee will agree, that, regardless of the ~~best~~ best will in the world, somehow or other leaks do occur, ~~and~~

Mr. Chairman: I'd been blaming you for them all, Mr. Renwick.

Mr. Renwick: I understand that. I understand that. So, as I say, in order to get our feet wet, and see whether or not it works, I would just as soon have the same awkwardness and inconvenience that the press are subject to. And we can look at it again at the adjournment and see whether we're doing all right this way or whether we have to change it. But let's get on with it or the ^{pre}preliminary matters will take up the rest of the day.

Mr. Chairman: I told Mr. Finlayson I would give him an opportunity. Just commenting on yours, however, Mr. Shibley tells me it's going to be awfully difficult for him to

Mr. Shibley: Impossible, just impossible. *It will go on for*
if we do it that way.

Mr. Finlayson: May I make a suggestion ^{which} ~~that~~ I think is realistic and follows the spirit of what Mr. Shibley has suggested. I have just seen the report this morning, and there was another version ^{of it} which my client saw ~~a~~ last night, and I have very, very serious reservations with respect to certain portions of it.

Now, what I suggest that we do is that we deal with this on a sort of a topic basis, that Mr. Shibley should be permitted to ask the witness about certain sections that he has, and the report is set out in sections so that this is not going to be

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any type of a problem, and then, prior to it being released to
the press, that Mr. Genest or myself might suggest ~~certain question~~
~~Mr. Genest to put to the witness, and perhaps members of~~
~~the~~

(Tape H-2567 follows)

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~~perhaps~~ ^{to put to the witnesses} certain questions to the Chairman, and perhaps members of the committee would have questions of their own, so that when the section of the report is released to the press, and they have had the benefit of not only the report, but the examination of Mr. Anson-Cartwright on that, so that they would then be in a position to put whatever qualifications that the witness may have made to the report into any press report. Now, I submit that this is an awkward way of doing it, I appreciate that, ~~but~~ ^{but} there is no question about it that ~~with~~ newspaper reporters and radio reporters, having their own personal deadlines to meet, ~~if~~ if they want to get a news release out on a certain hour then they have got to take whatever they have got at that time and that is all the information they have. I think, ~~and~~ with respect, we can be as fair to everybody as possible if we can proceed on a section-by-section basis. Now Mr. Shibley has mentioned a page-by-page basis. I think that is a little awkward, but certainly section by section does solve my problem.

Mr. Chairman: I gather the gist of your suggestion, though, is even on section by section that the section would not be made public to the media until after it had been dealt with, not before it had been dealt with.

Mr. Finlayson: That's right.

Mr. Deans: No, no.

Mr. Finlayson: No, but the members of the committee will have it in front of them.

Mr. Bullbrook: ^{This flies entirely in the face of what I suggested,} ~~What I suggest is,~~ and I really think, I say this most respectfully, we are complicating it ~~well~~ beyond reason.

Mr. Chairman: ^{I agree, and again,} ~~Again~~ I think we are making our own problems here by drawing undue attention to something that if we got on with the job and the final result is in, I haven't seen the report other than looking over Mr. Shibley's shoulders here, but I gather ~~the~~ the explanations in ~~them~~ there is nothing very much to be alarmed at the end result.

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Mr. Deans: Mr. Chairman, one point.

Mr. W. Hodrson: *But if you never*
saw it

Mr. Chairman: Well, I have got some figures here that I have heard from various committee members and from counsel.

Mr. Deans: Well, can I make a point, Mr. Chairman? I am a little ~~am~~ afraid of Mr. Finlayson's suggestion. I can well understand it. The problem is that-- I agree that it should be dealt with by topic. What I am worried about is that we ~~are~~ are deviating entirely from the way we have taken evidence all the way through the hearing, that we have taken evidence by putting whatever the evidence was as an exhibit, we have been dealt with the exhibit, and the press have reported whatever it was that they ~~have asked~~ *happen to glean* from the evidence that came out. I don't see why we should deviate from that today. I think that Mr. Anson-Cartwright has a report which he is prepared to substantiate to the best of his ability. Hydro and Canada Square obviously ~~will~~ *will* have the opportunity to ~~cross~~ cross-examine through the chair, and therefore we should -- the point I do agree with is, *that* rather than page by page, topic by topic might be more realistic, but other than that, ~~that~~ we ought not to in any way ~~try~~ *try* to have the press pick up the import of the report, simply from the questions that are asked, because that could well be more damaging than having the report in front of them.

Mr. Chairman: Mr. Walker.

Mr. Walker: Mr. Chairman, I tend to align myself with what Mr. Renwick has suggested. I think that ~~could~~ *seems to* be the most appropriate manner. It may be a bit more awkward and it may cause us some difficulties, and maybe we may have to even extend ourselves a bit. However, there are competing interests, as we have indicated in the past, there are many interests here that are at stake and it is in the interest of this committee that in the end we can say that we handled the matter properly. While it may take a bit longer, it may be a bit awkward, I am prepared to agree with what Mr. Renwick has proposed and suggest that we should find ourselves in a similar

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position as the news media.

Mr. Chairman: Any other comments?

Mr. Allan: My only comment, Mr. Chairman, is that we have a very competent chairman. I suggest that he indicate what we will do.

Mr. Chairman: Mr. Hodgson.

Mr. R.G. Hodgson: Mr. Chairman, I think you have alerted the press to the danger of this reporting, or getting involved in something that isn't factual or comes out in the end, and I have a tendency to trust the press at this time, because there are other certain things that ~~are~~ are on their shoulders, which if they don't do properly, they are responsible men and women and I have a tendency to trust them at this point in time, because you have alerted them to the possibilities and the problems, and they are big enough to realize the errors of their ways if they get into that area.

Mr. Chairman: Thank you, Mr. Hodgson. I am going to rule this way: that the members of the committee will have the full report in front of them, I may ask Mr. Moore to gather them up if we recess or if we go on lunch period. ~~Council~~ It is not as though the report has not been

Tape H 2568 follows

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(Mr. Chairman)

~~Mr. Moore to gather them up if we released it if we go at~~
~~lengthy part of a 1000 words the rest has been~~
released. Mr. Walker has a copy of it.

Mr. Walker: I don't have a copy?

Mr. Chairman: I thought you had a copy because -

Mr. Walker: I don't have a copy, no.

Mr. Chairman: I thought you released one to him yesterday. I'm wrong in that.

Mr. Walker: He wouldn't do it.

Mr. Chairman: Well, all right. I understood and asked him if he would release a copy to you yesterday but, certainly, the two counsel for Canada Square and for -

Mr. Walker: I was going home but decided I'd better not go.

Mr. Chairman: Oh, all right. I thought you had a copy of it, and my apology¹⁰⁰ because I spoke to Mr. Shibley -

Mr. Walker: My suspicious mind told me to come back.

Mr. Chairman: - and in view of the fact that you weren't to be here today, I thought you had a copy.

Mr. Renwick: Mr. Chairman.

Mr. Chairman: Yes, Mr. Renwick.

Mr. Renwick: I ~~am~~ dislike being awkward, but I'm going to be awkward. ~~I'd like to know~~ Mr. Shibley ~~made~~ made a comment that it would be difficult for him to proceed in that way but, subject to what Mr. ~~at~~ Shibley has to say, I'm inclined to ~~then~~ ~~challenge~~ challenge your ruling for the reasons -

Mr. Chairman: Just let me complete my own thought on it.

Mr. Renwick: - which I have stated earlier.

Mr. Chairman: I was going to rule that the committee members all have copies of it, depending on how far we get, that they would be gathered up by Mr. Moore and that the press would get them page by page as we come to them. I gather that that can be done. Mr. Shibley.

Mr. Shibley: I just want to understand the second

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part of your ruling. As I arrive at a page, and while I'm dealing with it, the press are to have that page in front of them.

Mr. Chairman: Right.

Mr. Shibley: Thank you. Just in deference, Mr. Renwick, my reason for saying it's awkward is that it saves so much time if, as the witness is reviewing a topic on a given page, you can read the content of that page along. In the material there are many arithmetic matters set forth and, without the figures set forth in front of you, without the statement ~~that's~~ that's being explained being right in front of you, it would be very difficult -

Mr. Renwick: Are we talking about the same thing? You are going to provide, page by page to the press, a page at a time. Why can't we receive the report page by page? What does that do?

Mr. Shibley: Frankly, what's the difference, Mr. Renwick?

Mr. Renwick: The difference is -

Mr. R.G. Hodgson: We'd have a bound volume and they would get the loose pages.

Mr. Renwick: I understand that. I understand that quite clearly.

Mr. Shibley: I have no concern about the members of the committee having the whole ~~the~~ report at the outset because ultimately you will have it in any event, and secondly, I'm presuming upon the fact that all members of the committee will maintain ~~the~~ confidentiality.

Mr. Renwick: But that's an assumption that I'm not prepared to run in this instance. I am not. If we have gone through all of this elaborate ~~the~~ because of concern to protect people then I'll be damned if I want to be a member of a committee subjected to the usual ~~the~~ result that, somehow or other, the information, inadvertently or otherwise, gets out. If you're going to go page by page, and the press are going to have it

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page by page, I will put up with that inconvenience and have it page by page.

Mr. Shibley: I can tell you, Mr. Renwick, it's not going to take that long. You see, the report is formed up as a summary of findings right from the outset.

Mr. Renwick: All I wanted was your explanation and I understand the explanation and I would therefore ask the Chairman to vary his ruling to provide page by page to the committee as we deal with it on a trial basis until the noon adjournment to see whether or not this ^{is} the way in which we can proceed and, if you do not choose to vary your ruling, then I ~~must~~ must say, being awkward, I would want to challenge it.

Mr. Chairman: Gentlemen, let me just have the floor. You've challenged it, Mr. Renwick, and that's fine and right and I don't intend to vary the ruling because they are bound and it is there. But I won't be disappointed for one little minute if the committee decided to do it.

Mr. Renwick: Well, I would.

Mr. Chairman: But I'm going to say this, if the committee doesn't support my ruling, the same procedure ~~will be~~ ^{4.25} ~~that~~ you are recommending.

Mr. Renwick: All right.

Mr. Chairman: Is that all right?

Mr. Renwick: Yes, and I'll abide ¹² the result of the ruling.

Mr. Chairman: So, in other words, if they accept my ruling, fine. If they turn my ruling down then we'll adopt what Mr. Renwick is proposing. Is that reasonable?

Mr. W. Hodgson: Mr. Chairman, we haven't ^{got to} ~~any~~ vote like this in this committee. I'm in favour. I don't see any harm. I don't think we should be putting any great advantage over the press. ~~We're asking for confidentiality and~~

(Tape H-2569 follows)

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~~members~~ were asking for confidentiality and their co-operation. Why should we, as committee members, be put at an advantage over the press at this time?

I'll support Mr. Renwick.

Mr. Chairman: I'm not worrying about the vote.

I'm not going to figure that it's any great — I just want to get on with it. It's not going to upset me.

Mr. W. Newman: Mr. Chairman, in order to move this along, I would like to see us deal with it page by page until noon without having to challenge a ~~vote~~ *your ruling*

Mr. Chairman: All right then, It's not upsetting me.

All those in favour of my ruling? Four.

Opposed? Five.

The proposal will be dealt with in the manner suggested by Mr. Renwick and I'm not in the least upset and I'm not going to go home crying.

Mr. Renwick: Until noon?

Mr. Chairman: Until noon. That was your —

All right, we'll take a recess now so ^{that} ~~as~~ the pages may be separated.

The Committee recessed briefly at 11:21 o'clock, am.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order. I apologize to the ~~press~~ press for having ~~staken~~ stolen one of their tables. They will have to get a little more friendly than they have been.

Press ~~table~~: With who?

Mr. Chairman: With each other, not with the committee necessarily, but they will have to bear with us. As I say, I apologize to them, but I certainly don't want them up at this table that now I find behind me. They have been kind to the Chairman, they have given him page one.

Mr. Moore's secretary here, who is in charge of the table, wonders what the exercise is all about, but Mr. Shibley, I understand, you are ready to proceed?

Mr. Walker: Just one caveat, Mr. Chairman. It's really the point that I have been trying to raise, and everyone says, "We are going to come to it; we ~~are~~ are going to come to it", but we have had these problems already with respect to what may or may not be in the report. I don't want to find the situation where Mr. ~~Exx~~ Anson-Cartwright is reporting on point 3 when we have not resolved point 3. ~~Rt~~ Point 3 in our own self-adopted terms of reference says:

"Did Ontario Housing take all steps necessary to obtain competitive proposals?"

Well, I figure that the report will be written by 11 people ~~and~~ in this committee. I don't think that that point is something that is within the terms of reference of Mr. Anson-Cartwright. If those terms have been conveyed to him, they have been improperly conveyed, or ~~he~~ if he has adopted them, then I think he has exceeded his terms of reference, Mr. Chairman, ~~with~~ with all due respect.

Mr. Chairman: I don't really know what the reference is. Has Mr. Anson-Cartwright given some opinion in regard to that term, Mr. Shibley?

Mr. Walker: Well, he said he took one and three as being his basis for the report. Am I not correct Mr. Anson-Cartwright?

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Mr. Anson-Cartwright: Well, Mr. Chairman.

Mr. Chairman: Could you explain that to Mr. Walker

and the rest of us?

Mr. ~~xxxxxx~~ Shibley: Mr. Chairman, this witness

would necessarily have to seek out the information upon which a comparison was made by Hydro, and reach a conclusion as to whether they had obtained all such necessary information. Surely on an overall examination of whether they got all the necessary information to make a comparison of the proposals, he is in an excellent position to give factual evidence in that regard.

Mr. Chairman: But this is evidence during the financing of the various proposals. Is that right?

Mr. Shibley: No, at the time that Hydro was making its comparison, did it have all necessary information to make a valid comparison of the proposals?

Mr. Walker: I don't want him to tell me that story. I will make those conclusions myself.

Mr. Renwick: Of course, you will.

Mr. Chairman: But Mr. Walker, if it is comparison on the dollars and cents, surely that is what his job is. If it is comparison as to the end result, that is our problem, but certainly

Mr. Walker: That is what number 3 says.

Mr. Chairman: Well I agree that the end result is our problem, but if Mr. Anson-Cartwright has evidence as to the figures of the various proposals, do you not want to hear it?

Mr. Walker: All I want to hear are facts and figures on it, but I don't want Mr. Anson-Cartwright to tell me whether Hydro took all steps necessary to obtain competitive proposals.

Mr. Chairman: Well, all steps, I agree

Mr. Walker: No. I don't mind him telling us, or telling me, if I can put it in that tone, I don't mind him telling what the Y and R situation was with respect to their financing, or what the Horizon proposal, what the Ellis-Don situation is and so on,

(Mr. Walker)

but I am not going to tolerate him telling me whether they took all the steps necessary to obtain competitive proposals.

Mr. Shibley: He is not going to tell you that, but that
Mr. Walker: That's what he said he was.
he is going to tell you is whether Hydro had all necessary
information to make a valid comparison. That's a different thing.

Mr. Benwick: That sounds very self-righteous. I can't find fault with it.

~~Mr. Shibley: That's~~

Mr. Walker: Well, I offer that caveat and beware of me ~~xxx~~ later.

Mr. Chairman: That's not a threat is it Mr. Walker?

Mr. Walker: I identify that threat Mr. Chairman, that is the difference, that distinguishes this committee.

Mr. Allan: Is that someone close to the Premier and high in Cabinet?

Mr. Walker: Not even high in the Conservative Party.

Mr. Chairman: Mr. Shibley, with all those caveats, please proceed.

Mr. Shibley: May I have pages one, two and three distributed please?

Mr. Chairman: The Chairman is a little envious of you, Mr. Genest. I see you sitting down there with the whole book and I haven't got anything but the cover yet.

Mr. Deans: The thing is, if there is a leak, we'll know where it came from.

Mr. Chairman: It came right from Mr. Genest.

Mr. Genest: We are getting right in on the first three pages on the problem,___

Tape H 2571 follows

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11:40 - 11:45 am
JLP

~~Mr. Genest: We are getting right in on the first~~

~~three pages.~~

Mr. Shibley: I'm going to get on with this evidence if it ^{is} Mr. Anson-Cartwright, the first page is simply styled "Report to the Select Committee of the Legislature of Ontario on financial aspects of the Ontario Head Office building," dated September, 1973. So this, as Mr. Renwick indicated, is a report by you to this Committee on your retainer by it.

Mr. Anson-Cartwright: That's right.

Mr. Shibley: The next page is your letter of September 11, directed to the Chairman and members of the Committee, "Pursuant to my appointment by your Committee on May 15, I am pleased to submit my report on the financial aspects of Ontario Hydro Head Office building. Specifically, the financial data in this report has been presented to assist your Committee in its findings and recommendations on issues 1 and 3, as set out in Shibley's memorandum, May 15, which are: 1. Are ^{one of} the terms of the agreement as they affect Hydro, financially and economically sound? 3. ^{Did} ~~what~~ Hydro take all steps necessary to obtain competitive proposals? and then ^{it's} signed by yourself.

Mr. Deans: Mr. Chairman, on a point of order, I hear rumblings that the press have received one copy at the table. Is it possible to have one copy per member?

Mr. Bell:
~~Chairman~~

There will be at 12 o'clock.

Mr. Chairman: I think this is why they put them so close together so they'd be able to read over each other's shoulder.

Mr. Renwick: Are there any more?

Mr. Chairman: I think it's no great problem other than ^{for} this problem we have created ~~ourselves~~ as to the mechanics of it.

Mr. Renwick: If they've got them, give them out.

Mr. Chairman: The press are much better off than I am. I haven't got any of these pages yet, other than that same front cover so if you'll just be patient, we'll get them.

Mr. Deans: But you can look over the counsel's shoulder.

Mr. Shibley: Mr. Chairman, I believed that we were hear today to hear the evidence of Mr. Anson-Cartwright. It is now a quarter ~~of~~ ^{of} twelve, an hour and three-quarters have gone by, and I must say that I'd ask the Chair to ask the members to afford me some co-operation to deal with evidence of great significance to this Committee. ~~and~~ I think it's time to stop throwing ~~up~~ all sorts of comment and obstruction to the introduction of this man's testimony.

Mr. Walker: Well, just a moment, Mr. Chairman.

Mr. Chairman: Mr. Walker, you were the one that ~~wanted~~ wanted this Committee to move along.

Mr. Walker: That's right, Mr. Chairman, but I ^{raised} ~~raised~~ a point that I considered to be appropriate and I in no way consider it to be obstructive, and, if ~~it~~ ^{the point} were pointed in my direction, aim your gun elsewhere.

Mr. Chairman: I don't think it was pointed in your ~~direction~~. ^{Mr. Shibley: I wasn't directing it at}
Chairman: Mr. Walker. I think you have taken it upon yourself to assume that's the way it was pointed.

Mr. Walker: I'm not the one who made the comment.

Mr. Rennie: Let's go.

Mr. Chairman: Let's move on.

Mr. Shibley: If I may deal with the first page of the report itself, Mr. Anson-Cartwright, would you please indicate in a summary way what ~~it~~ it is that this page indicates by way of index?

Mr. Anson-Cartwright: Are you talking about the index per se?

Mr. Shibley: The index page itself; that's as far as we've gone.

Mr. Anson-Cartwright: Well, I think it's rather self-explanatory, Mr. Shibley, but I have, first of all, in my report, outlined the summary of my findings, which deal with topics such as competitive bids, the rents to be paid by Hydro over the term of the lease, and elements of profit. Then I have commented on the concept of what has been called pro-ration. Then I have dealt with the range of after-tax ^{and it's} ~~then~~ important to know it's after-

(Mr. Anson-Cartwright)

tax profits, which might accrue to the developer over the 30-year term of the lease. There are some specific comments then on cash-flow benefits, which need explanation later on, and on capital-cost allowances, or ~~a~~ depreciation for tax purposes.

brief

Then I have some very ~~brief~~ commentary on the different routes that Ontario Hydro could have taken in financing, that is to say, the lease-purchase transaction versus direct financing. Those are very brief comments.

(Tape H-2572 follows)

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M.R.

(Mr. Anson-Cartwright)

~~in financing. That is to say, the lease-purchase transaction was a direct financing. Those are very brief comments.~~

In the back of the report there are two schedules and eight sub-sections of an appendix, which are mathematical calculations and are intended to back up the commentary that I have made, and they deal specifically with the range of after-tax profits accruing to a developer over the 30-year term, and then so that this information will not be misleading and will not be misconstrued specifically by the press, I have tried to present that data in another fashion, that is, the present value of those ~~in~~ after-tax profits.

I think it's really, from my point of view, the present value that is the most important point of this report, the present value of the after-tax profits that accrue.

Mr. Shibley: All right. May I have the next page produced to the members please?

Mr. Anson-Cartwright, you described this page as the beginning of a summary of the findings ^{or} highlights of your analysis of the financial implications of the agreement between Hydro, and including commentary on other financial data prepared by officials of Hydro, ^{and} other competitors for the construction of the Hydro building. Would you first deal with the matter of competitive bids. Did you, in the overall, examine the information in the possession of Ontario Hydro at the time it was attempting a comparison of the proposal submitted by the various developers?

Mr. Anson-Cartwright: I did.

Mr. Shibley: And in particular, did you consider the information which has been exhibited before this committee as the whole of the information and the oral testimony given as to the information available to Hydro respecting the submissions of Ellis-Don, Horizon, Y and B and Canada ~~Maple Leaf~~ Square?

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Mr. Anson-Cartwright: Yes, I have.

Mr. Shibley: And in that respect, did you have regard for the various memoranda which purported to effect comparisons of the proposal?

Mr. Anson-Cartwright: Yes.

Mr. Shibley: As to content?

Mr. Anson-Cartwright: Yes.

Mr. Shibley: And, in particular, did you concern yourself with whether the information as disclosed by that memoranda enabled you first of all to make a comparison of the proposal submitted, in the sense of the information being sufficiently complete?

Mr. Anson-Cartwright: Are you referring to all of the memoranda that ~~were~~ ^{were} prepared by Ontario Hydro or are you referring to some particular document?

Mr. Shibley: No. I'm referring to all of it as it existed at the time the ~~the~~ decision was taken to deal with Canada Square, being July 19th, 1972.

Mr. Anson-Cartwright: Yes.

Mr. Shibley: Yes. You did. Did you formulate an opinion as to whether they had all necessary information to make a valid comparison?

Mr. Anson-Cartwright: Yes, I did come to the conclusion that they had not obtained all the necessary information to make a valid comparison of the four proposals that were submitted.

Mr. Shibley: Now, then, in that respect, will the particulars of what is lacking in the material become apparent as we go through the material? Or would you like to comment on that now?

Mr. Anson-Cartwright: I think I'd prefer to comment on that now and explain that particular comment under the heading "Tender versus Proposal".

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(Mr. Anson-Cartwright)

When you take the proposal route as opposed to the tender route, it becomes rather difficult to make a comparison of alternative proposals. And in deference to Ontario Hydro,

I ~~am~~

H-2573 to follow

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D.L.

(Mr. Anson-Cartwright)

~~It is difficult to make a comparison of alternative~~
~~proposals~~ and in reference to Ontario Hydro I have
recognized that. But it becomes a time-consuming process
to compare alternative lease proposals. But then, I think,
it's ~~more~~ ^a incumbent upon the person who is asking for
the proposals to ensure that all of the necessary data
is ~~there~~ there, such as, in this particular case, building
costs, financing costs, maintenance costs, profit elements,
income tax position and so forth. Now, I think that you
have to really ~~maximize~~ obtain details in all of those
areas specifically and in detail from each competing proposer.
Otherwise it's very difficult to make an objective determination
of the alternative proposals. Now, as I say, one of the
problems in the proposal route is the time-consuming aspect
of comparing alternatives. ~~and~~ More and more in the private
sector, corporations wanting this type of transaction are
dealing with specific developers and saying, this is my man,
I rely upon him and this is the developer I will take. ~~Now~~
I have no comment as to what should be done in the public
sector, but I would say that there was, and I say this with
respect, I think there was inadequate information in this
particular case to make it a proper assessment of all of the
proposals.

Mr. Shibley: And when you say it was inadequate, was
the information which was lacking material to the assessment?

Mr. Anson-Cartwright: I think that follows.

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D.L.

H 2573-2

Mr. Shibley: Yes, all right. And you've mentioned the elements involved, and I'm not going to exercise you further about it. The next topic in your summary is pro-ration factor. Would you care to deal with it, please.

Mr. Anson-Cartwright: Well, I guess it follows from what I have just said that to select a particular proposal you need to get into the details and in certain cases attempt to share benefits with the proposers. You need to provide specifications in each particular area, and what the pro-ration factor does, it deals with only one particular quantum and that is the cost of financing. On page eight of my report, which the press and the committee members *may not see yet*

Mr. Shibley: I'm just about to have distributed pages 8, 9 and 10 all dealing with pro-ration, Mr. Chairman.

Mr. Chairman: These are coming to us out of order. Is that ~~xxxxxxxxx~~ right?

Mr. Shibley: Yes, they are.

Mr. Anson-Cartwright: Will I wait for a moment?

Mr. Chairman: Yes

Mr. Shibley: If you would, because I think if we have those three pages in front of us we can deal with the subject.

Mr. Chairman: Mr. Finlayson, I want to point out to you that this is doing it more along the line that you suggested, topic by topic and that this is Mr. Shibley

(Tape 2574 follows)

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fvk

(Mr. Chairman)

following the suggestion of yours, I thought it was worth noting.

Mr. Finlayson: This is the last day of the hearing, isn't it

Mr. Shibley: I think all members now have this, and Mr. Anson-Cartwright and you can deal with anything in the pages eight, nine and ten, all having to do with proportion.

Mr. Anson-Cartwright: Yes, what I was saying is that proportion deals with financing costs, and what officials of Hydro have done is they have put each of the four developers, who estimated different capital costs of construction per square foot, at the same level of \$34.00 per square foot, by adjusting the rental quoted by the increase of the rental having regard to the additional financing costs, the incremental financing costs.

For example, I think we could deal with the second paragraph of this commentary just as one example. In the case of Y&R Properties, there is a difference between the quality construction cost, if I might call it such, of \$34.00 per square foot, and that quoted by Y&R of \$28.00, the difference being \$6.00 per square foot. Now, what officials of Hydro did, they decided the cost of amortizing that additional financing of \$6.00 per square foot times the number of square feet in the building, should reflect in the rental quoted by ~~the~~ Y&R in order to make a comparison of that proposal ~~is~~ with other proposals. The effect of the proportion in the case of Y&R turns out to be nine cents per square foot for each \$1.00 per square foot in the cost of construction. In other words, a total of 54 cents per ~~sq~~ square foot. There is no real secret to this calculation. It's basically, in each case, nine cents per square foot for each additional \$1.00 per square foot of cost of construction, in arriving at the rental rate.

Mr. Walker: I missed the extension there. I'm not with you on the figures. How do you get from nine ~~tax~~ cents to 54 cents?

Mr. Anson-Cartwright: How do you get from nine cents to 54 cents? There is a ~~six~~ \$6.00 differential.

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fvk

Mr. Walker: All right. I'm with you now.

Mr. Anson-Cartwright: And six times nine gives you 54 cents. ~~Mr.~~ If you'll turn to page nine--

Mr. Walker: I took grade 46, too.

Mr. Anson-Cartwright: ~~Walker~~ there's an old ~~saying~~ adage which I'd like to paraphrase, "Liars figure and figures lie" and I guess somebody could say that applies to my document as well, they'd like to say it, but what has been done here, as you can see, is adjusting for the cost of financing.

Taking Hydro's point of view, the comment could be made: "That's a conservative approach to adjusting the rentals quoted."

Mr. Shibley: Be careful, that's small "c" conservative.

Mr. Anson-Cartwright: Yes, with no MP at the end.

I recognize that but I think that there are a number of elements ~~not~~ missing in taking that approach merely to decide whether ~~the~~ the quotes are competitive.

~~For example, I don't know how you can~~

(Tape H-2575 follows)

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(Mr. Anson-Cartwright)

~~... with another two quotes and competitive~~ For example, I don't know how you can measure quality of construction by pro-ration. I mean, I think that's been dealt with in this committee and I probably shouldn't expand on it.

It also doesn't take into account _____

Mr. Shibley: I'm sorry, you're at page 10 now, aren't you?

Mr. Anson-Cartwright: Page 10.

Mr. Shibley: Yes. Just for everybody's information. You reached the conclusion at the time that pro-ration is not a satisfactory method of comparing the package proposals of competing developers with a view to selecting a particular developer's submission, and you are now setting out your reasons for that conclusion? *Is that correct?*

Mr. Anson-Cartwright: That's right. I think that -- yes, this is one of the tests that I might - I can't say that I would fall upon this test, but I might have used something like this in assessing things, but I don't think it should be the final ~~any~~ criterion for determining selectivity or for ~~determining~~ determining competitiveness. I have mentioned some reasons for coming to that conclusion, ~~the~~ quality of construction, foreign exchange, --

Mr. Shibley: Just before you -- I don't want you to slip over these because I think the committee should clearly understand them.

Mr. Anson-Cartwright: Fine.

Mr. Shibley: The first reason is no assurance that all of the four developers ~~estimated cost~~ of construction reflected the same factors, such as, interim financing costs, stand-by fees, contingencies for strikes, escalation of costs, and inflation.

Now, all of those are factors confronting any one of the developers?

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Mr. Anson-Cartwright: That's right.

Mr. Shibley: And the developer, in fairness to Canada Square, that actually acquires the contract continues to be confronted with certain of those contingencies after the contract has been awarded to it. Is that so?

Mr. Anson-Cartwright: ^{Any} A developer faces those problems.

Mr. Shibley: Right. On the other hand, with respect to the negotiating position of Hydro, it should have ascertained, in advance of the selection, what the position of each of the four developers was, vis-à-vis such things as you've mentioned; cost of construction, interim financing costs, stand-by fees and so on. Is that correct?

Mr. Anson-Cartwright: That's right.

Mr. Shibley: And in this case was it done as part of the - what they call pro-rating process?

Mr. Anson-Cartwright: Not to the best of my knowledge, no.

Mr. Shibley: No, right. All right. They used the ~~the~~ ^a simplistic method that you've indicated - nine cents per foot, per million dollars of ~~cost~~.

Mr. Anson-Cartwright: Right.

Mr. Shibley: ~~see~~ ^{per} per dollar —

Mr. Anson-Cartwright: What I'm trying to say here is that the rental quoted by each particular proposer or developer had component parts in it which included as one factor the cost of construction. Now, in that cost of construction various developers might have had different components and they may have put in the other part of the rental rate other components. Now, for example, the profit on construction, or contingencies — that might have been included, either in construction costs or in ~~the~~ sort of the remaining part of the rental.

Mr. Shibley: Right.

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Mr. Anson-Cartwright:

I think officials of Hydro have said that this is a package deal which you cannot segregate, but there is in fact a segregation here for costs of construction and then that is dealt - that is pro-rated without the other elements of the package.

Mr. Shibley: Yes.

Mr. Anson-Cartwright: That's basically the whole philosophy that I have regarding the pro-ration. It doesn't deal with all of the components and under the heading 5 ~~five~~ I'm just giving illustrations of reasons why pro-ration doesn't - shouldn't be used as a criterion for selection. It might be used for other purposes.

Mr. Shibley: Now, the other item in there - you say, Item ⁽¹²⁾ ~~12~~, "Quality of Construction cannot be measured by a concept of pro-ration which merely takes into account costs of financing at various interest rates for the same capital cost per square foot."

Would you enlarge on that, please?

Mr. Anson-Cartwright: Well, I think that ^{at} at least, I gather that issue has been dealt with in this committee. It's a question of whether you can say that for \$34 per square foot all of the developers and contractors are going to build exactly the same quality building. And I really can't comment any further on that. It's not really a financial matter.

Mr. Shibley: All right. Then, Item No. 5

~~Mr. Anson-Cartwright:~~~~I really can't comment any further on this. It is not a matter.~~

Mr. Shibley: All right, then item number ^(v) ~~8~~, you made ¹⁶ comments on foreign exchange.

Mr. Anson-Cartwright: Yes. I gather that some of the developers were using Canadian funds, or they had indicated that they were using Canadian funds. Others were using foreign sources, basically U.S. dollars, and the quotations of so much per square foot compared in U.S. dollars converted to Canadian dollars, with Canadian dollar financing, are not comparable if you are going to pass on to Ontario Hydro ~~some~~ foreign exchange fluctuations. Now, I think I probably have in my papers an example of that, if you wanted me to...

Mr. Shibley: Which page is that?

Mr. Anson-Cartwright: I am just saying...

Mr. Shibley: Oh I see, yes.

Mr. Anson-Cartwright: ...in some rough note calculations ^{la} that I have prepared, ~~just~~ ^{is} an example of foreign exchange, and I recognize in the actual ~~6~~ agreement that foreign exchange differentials were to be borne ^{by} and shared by Ontario Hydro, or taken by, so that up or down they had either a risk or a benefit.

Mr. Bullbrook: In that connection, would you permit me...

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: You recall the evidence to be, Mr. Anson-Cartwright, from Hydro that they had substantial American, should I say, reserves or cash flow, which minimized their concern from the negotiation point of view. Doesn't it follow as a matter of logic also, it would minimize the concern that you express, with respect to the effect of foreign exchange in connection with the pro-rational formula?

Mr. Anson-Cartwright: I will answer yes, to that question but with respect, it -- I am dealing with the second column to the right on page 9: "Equivalent Rental Pro-Rated."

Mr. Bullbrook: By the way, you had better guide me here

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PLG

(Mr. Bullbrook)

when we are asking questions, because in connection with this particular witness, I know it is very difficult for you to be interrupted.

Mr. Shibley: That's fine. The question is very cogent, yes.

Mr. Deans: No, but I want to clear something up in my mind as a result of the question. If there was no foreign exchange risk, ~~and~~ notwithstanding the reserves, if you want to call them that, that were already in the United States, those reserves would be a benefit, assuming there was a benefit of any kind. Those would be of benefit to Hydro rather than a set-off factor. In other words, the money in the United States, if there were no foreign exchange risk, rather than being used as a set-off, would in fact then be a direct benefit.

Mr. Anson-Cartwright: We are getting slightly off on a tangent, Mr. Shibley. I would just like to bring this foreign exchange point to bear on the concept of pro-ration, if I may just narrow ~~the~~ the issue slightly.

We are comparing in that column equivalent rental pro-rated per square foot, and we have -- I am not going to mention any particular developer. Let's say that Y and R has U.S. funds.

~~my~~ recollection is not ~~particularly~~ sound on this point.

~~And~~ Ellis-Don has Canadian funds, and the risk is to be borne for foreign exchange by Hydro. Then I think you are slightly comparing apples and oranges because the ~~\$5.04~~ could go up to ~~\$5.33~~ \$5.33.

I recognize, ~~U~~ pursuant to the agreement, it could also go down, but

~~I am just saying that you shouldn't make a decision on those four numbers, without taking into account foreign exchange. I am just~~
~~on the basis of two~~

Tape H 2577 follows

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JLP

(Anson@Cartwright)

~~Mr. Bullbrook:~~ I'm just saying that ~~you~~ shouldn't make a decision on those four numbers without taking into account foreign exchange. I'm just dealing with the theory of pro-ration.

Mr. Bullbrook: Yes. Well, my problem is this, and I recognize ~~that~~ I think the validity of what Mr. Deans said, but my problem is this - this has nothing to do with the negotiation, I hope you understand the distinction. I'm trying to put myself in the mind of those people ^{adopting} ~~adopting~~ the pro-ration formula. To them they were comparing apples and apples, not withstanding that they were apples and oranges, because of collateral benefits, these reserves that they had.

Mr. Anson-Cartwright: What you're talking about really is a question of - you're saying, in effect, they had hedged their ~~XXX~~ US dollars, that's really, basically, what you're saying, to put it in a nutshell.

Mr. Bullbrook: I'm saying this, in effect, if it's correct, and I want to be corrected, there is great validity in what you say with respect, on page 10, to ^(V) ~~to~~, under item ^(V) ~~in~~ general, from a philosophical point of view. But superimposed, as far as Hydro was concerned, they had a particular set of circumstances that relieved them from that problem.

Mr. Shibley: Mr. Allan's comments were on that same subject, Mr. Bullbrook:

Mr. Genest: With which Mr. Renwick didn't agree.

Mr. Renwick: Mr. Chairman, I'd like to make a point that it seems to me that, as at July 19, Hydro was operating on the specific advice of Mr. Candy, not advice, information of Mr. Candy, that it was now all going to be in Swiss francs.

Mr. Bullbrook: Very good, very good point.

Mr. Walker: But surely we have to ^{give comparison} ~~compare~~ to the final contract. *That's the*

Mr. Renwick: Mr. Chairman, I'm not saying that there isn't another aspect of when you make your assessed value. But we are talking about the point in time ^{at which} the Commission was fixed

(Mr. Renwick)

with the responsibility of making the decision as to the selection of the developer, and that was July 19.

Mr. Bullbrook: We must keep both things in mind, right.

Mr. Allan: Mr. Chairman, I wonder ~~whether~~, following Mr. Anson-Cartwright's information, if we might just go back to discussion.
some of that ~~discussion~~

Mr. Shibley: We'll be coming back to that in another context, Mr. Allan.

Mr. Walker: I'm just wondering, Mr. Chairman, following to some extent on what Mr. Bullbrook thought of, as Mr. Glen Hodgson has brought out a number of times, the pension funds were ^{very} issued considering that - were there two developers making invitations to the Hydro Pension Fund?

Mr. Genest: Just one.

Mr. Walker: One developer? I thought there was interest expressed by another one.

Mr. Genest: ~~This~~ There's a note in an Ames' file by Moog, but that hasn't been identified as Hydro.

Mr. Walker: All right. In any case, the fact that pension funds would not be available, at least Hydro pension funds would not be available, does that not, to some extent, alter the risk that might be available to a foreign ^{exchange} ~~exchange~~ or from foreign exchange? Because it would appear, in all likelihood, money would be borrowed from United States rather than Canada? ~~xxxxxxx~~ We have had evidence, I believe, that no Canadian company could put that package together, it would have to be some conglomerate, some number of companies, that might have to get together on it.


Mr. Shibley: With all due respect, Mr. Walker, I ^{really} ~~wouldn't~~ ~~xxxxxxx~~ don't think the pension fund thing has anything to do with the pro-rata problem we're dealing with. It was never really any part of anybody's proposal as such. Some of them said if the pension ^{fund} wants to participate, fine, we'll be happy to have them do so, but Hydro never entertained doing it on any such basis. And, what we're trying to do now is fix ourselves with the position

(Mr. Shibley)

of the people in Hydro, in July of 1972, who were trying to make a choice and who employed a pro-rating factor. As far as Hydro was concerned, it was no part of anyone's deal that they were going to put pension moneys into the transaction.

Mr. Walker: The contrast I'm offering is that Mr. Anson Cartwright indicated that Canadian funds would not afford the same risk. What I'm saying is that the ability to secure Canadian funds may not necessarily be there.

Mr. Anson-Cartwright: That is not what ~~It~~^{was} saying. ~~It~~
~~WAA~~ I'm not talking about ~~a~~ risk at all, I'm ~~a~~ talking about comparative quotes, and saying - may I just give one example. Supposing we have, at the time of the mortgage drawdown, the Canadian dollar compared to the US dollar



(Tape H-2578 follows)

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M.R.

(Mr. Anson-Cartwright)

~~drawdown. The Canadian dollar compared to the U.S. dollar~~
at par. They are both par. And subsequently the Canadian dollar goes down to 95 cents. Assuming a financing cost, I'm just using this as an example of \$3.35 per square foot at par, that subsequently, because of the exchange fluctuation, becomes \$3.52. So that you increase the cost to Hydro by 17 ~~extra~~ cents. So the \$4.92, for example, of Canada Square, or the \$5.04 of Y and R, assuming they are using U.S. funds, would be \$5.07 and \$5.21. I'm just saying that to some extent you are comparing apples and oranges if you are using just these numbers, as a basis for selection.

And all I'm trying to drive home to the committee, — what I would have hoped I would have done, ^{and} I don't know whether I'm successful because of my labouring oral testimony, is that pro-rata is not a valid criterion for selection of competitive rental proposals.

Mr. Shibley: All right, I'd like then ~~and~~

Mr. Chairman: It may be that some of us have reached conclusions on that; not that we are not paying ~~the~~ attention ~~you~~ to you, sir, that we look a little bored.

Mr. Anson-Cartwright: I'm sorry.

Mr. Chairman: It may be that we've had a reasonable amount of evidence on it, ~~to date~~.

Mr. Deans: I assure you I'm not bored. *I don't know*

who looks bored.

~~Mr. Chairman: Inaudible~~

Mr. Anson-Cartwright: I'm a neophyte in this particular committee.

Mr. Chairman: You indicated to us that you might be having difficulty explaining it. I want to assure you it wasn't any lack of difficulty on your part explaining it, — or any difficulty on your part explaining it.

Mr. Walker: Mr. Chairman, may I follow on the point made by Mr. ~~Anson~~ Cartwright? Is it of any use whatsoever, assuming that there may be a number of factors on which a

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(Mr. Walker)

selection body makes a decision, is the pro-ration formula or the principle of any value?

Mr. Anson-Cartwright: I think it puts the four developers on an equal level as far as costs of financing are concerned. It brings everybody to \$34 per square foot, based on their interest rate for financing.

Mr. Deans: That's —

Mr. Anson-Cartwright: That's basically what it does, yes, but —

Mr. Walker: I'm not sure that you've — that I have seen what your answer is. Has it any value?

Mr. Anson-Cartwright: It ferrets out the costs, other than the costs of financing, in the rental quote. Now, I'll tell you how it does that. You are ~~saying~~ saying that the estimated capital cost of construction for everybody is \$34 per square foot and that, I believe, brings a rental rate, I think Mr. Nastich has agreed with me on this point, of \$3.24 per square foot. Then you are saying that you are comparing the other costs, such as maintenance, profit, and so on, and you are saying that they differ just as these figures in column ² differ.

In other words, you are saying for Ellis-Don, costs of financing are known to be \$3.24 per square foot because of this pro-ration factor. It may be a little bit more, because they've got a change in interest rate.

Therefore, the rest — the ~~remainder~~ remainder, \$2.04, is for maintenance, profit, and so on. And then, as I say, you can segregate that out and then see where the differences are for each particular developer. That's what that theory does, it says everybody has the same financing basically. On capital costs —

Mr. Walker: Well, then, if — are you saying it has some value?

Mr. Anson-Cartwright: Oh, yes. I'm not — don't misunderstand me, I'm not critical of the pro-ration factor, ~~but I think it's a bit of a~~

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(Mr. Anson-Cartwright)

~~... deal with the ...~~ But I think it's a test entering into a comparison of proposals but it shouldn't lead one to any specific conclusion of competitiveness.

Mr. Walker: Taken by itself ^{when} would be invalid but it has some value ~~afforded~~ other criteria.

Mr. Anson-Cartwright: In accounting matters we have various tests for things and ~~ratios~~ ratios, and so forth, and that's the type of thing that ~~pro-ratio~~ ^{pro-ratio} is.

Mr. Walker: So, in fact, the statement I made just prior to your comment, is that appropriately reflecting what you're saying?

Mr. Anson-Cartwright: That it has some validity, ~~and~~ taking into consideration some other factors?

Mr. Walker: Taken by itself with no other factor involved, it is -

Mr. Anson-Cartwright: Invalid.

Mr. Walker: - perhaps, approaching invalidity if it hasn't reached it but, if it's mixed with other criteria, and other factors, it's ~~unrelevant~~ ^{takes on relevance}.

Mr. Anson-Cartwright: Yes, it might be a test ~~is~~ which is relevant, yes.

Mr. Walker: Right, ~~is~~ okay.

Mr. Renwick: Mr. Chairman, I would like to ask -

Mr. Chairman: Mr. Renwick.

Mr. Renwick: May I ask that Mr. Anson-Cartwright be ~~examined~~ furnished with a copy of exhibit number 79? Mr. Anson-Cartwright, would you look at the bottom of page three and the top of page four? I take it that your conclusion is substantially the same as Mr. Deans' conclusion in this memorandum of July 6.

Mr. Anson-Cartwright: Just give me one second to -

Mr. Renwick: Please, yes.

Mr. Anson-Cartwright: I think I would have to ~~ask~~ agree with those ~~own~~ conclusions, yes.

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Mr. Renwick: Yes, particularly this last paragraph that "the adjusted rates assume profit and other costs remain the same, which may not be valid, and, certainly, the figures should not be used other than to suggest the degree to which the rates are affected by the financing available to the different builders, assuming the same building ~~same~~ costs."

Mr. Anson-Cartwright: Yes.

Mr. Shibley: Then, I'd like to turn to page two of your report.

Mr. Genest: Mr. Shibley, is this all on pro-ration?

Mr. Shibley: No, we're through with pro-ration.

Mr. Genest: I have some questions on pro-ration.

Mr. Chairman: Do you want to deal with them now or at the end? You'd rather deal ~~a~~ with ~~the~~ them now, would you?

Mr. Genest: Yes, I'm in the hands of the committee. I think perhaps while the subject is in your mind it might be more useful.

Mr. Chairman: I'm glad you say you're in the hands of the committee rather than in the hands of the chairman.

Mr. Genest: In the hands of the chairman. They're good hands.

Mr. Chairman: No, no, no. I think that I'd need more help than just my own, sir.

Mr. Genest: I wonder if you could put the following questions to Mr. Anson-Cartwright. Mr. Anson-Cartwright, am I right in understanding that the gist of your opinion is that while pro-ration may be a useful tool, it is improper to use it as the exclusive criterion?

Mr. Anson-Cartwright: I think that is a very good summary, ~~summary~~ Mr. Genest.

Mr. Genest: And am I right in understanding that if you assume as true the proposition that, in order to get the required quality, you need to have \$34.00 a square foot? ² The developer must spend \$34.00 a ~~sq~~ square foot in order to give you the required quality? Then, if you accept that as true, and

(Mr. Genest)

I know that's challenged, but ~~is~~ if you accept that as true does the process then take on more importance?

Mr. Anson-Cartwright: I think it does, but I think, then, if we're talking again about selection and competitive bids, in fairness, it would be reasonable to go back to the developers and see what were the components of their particular rental proposals.

~~Mr. Genest: I appreciate that. What I'm getting at is that it's very~~

(Tape H-2580 follows)

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~~Mr. Anson-Cartwright: I have agreed with you that I think it takes on more importance, but.~~

Mr. Genest: I appreciate that. What I am getting at is that I am trying to put you in the position of the Hydro financial people ~~wh~~ going through this ~~#~~exercise. Let us assume that the architect in whom you have confidence says that, regardless of what a developer says he is going to do, my judgment is that he is going to have to spend at least \$34 a square foot to give us the quality we need, and if you accept that as true, what do you say about the exercise then?

Mr. Anson-Cartwright: I have agreed with you that I think it takes on more importance, but.

Mr. Genest: That's all I want to know.

Mr. Shibley: Well, let him ~~fw~~ finish his answer.

Mr. Genest: I am sorry.

Mr. Anson-Cartwright: I didn't say that initially, Mr. Genest. I did agree with you *on that*.

Mr. Genest: Thank you very much, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Genest.

Mr. Shibley: We turn then to page 2 of your brief Mr. Anson-Cartwright. It then goes on to deal at the top of the page with income tax aspects. Would you care to comment on that?

Mr. Anson-Cartwright: Yes. I think that officials of Hydro had carried out a fair bit of research in the area of lease-purchase agreements, and I commend them for their research in that area. They came to the conclusion, with which I agree, that there are certain benefits and possibilities to defer income taxes, basically through the claiming of capital cost allowances for income tax purposes, which would be depreciation for business or accounting purposes. I seem to recall that there was an Exhibit by Hydro, I think it was Exhibit 67. In addition there was a study prepared by an official of Hydro by the name of Cameron, that pointed out the deferral of income-tax possibilities by ~~the~~ developers, ~~and~~ Hydro, of course. I understand, is not a tax-paying entity, so that if it had constructed the building on its own, of course,

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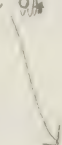
Mr. Chairman: Not income tax-paying. Hydro ~~w~~ always wants to make sure that there ~~are~~ ^{are} many other taxes that they do pay, such as heavy municipal taxes.

Mr. Anson-Cartwright: I am sure they bear their own burden, but ~~wik~~ the point I was trying to make was that if they had owned the building themselves, they would not have had the possibility of — there would have been no opportunity of course, ~~mean~~ because they are not ^{an} tax-paying corporation to defer taxes, ~~but~~ the point is that officials of Hydro did recognize that developers are, I shouldn't say unique, but are known to be permitted to defer taxes through the claiming of capital cost ~~allow~~ allowances. ~~with~~ As quite often happens in negotiations between developers and their clients, reference is made to this particular aspect, the income tax deferral possibilities and the savings resulting therefrom. It seems to me that officials of Hydro should have requested the individual developers to point out to them their income tax advantages, if any, and should have had an opportunity to share in some way through that income tax deferment.

Mr. Genest: Mr. Chairman, may I just be permitted a brief interruption to ~~wave~~ ^{and} a flag ~~to~~ warn the committee that these are conclusions ~~where~~ which we dispute. I just want to have that caveat entered. I think we will deal with that later.

Mr. Chairman: I have some questions to ask on it myself just on that point. They may or may not be applicable.

Mr. Anson-Cartwright: I wondered if I did mention — I seem to recall it is Exhibit 67. I am usually pretty good at remembering, ^I used to be a good remembering tax sections. I have forgotten them all as a result of



Tape H 2581 follows

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12.30 - 12.35 p.m.
M.R.

(Mr. Anson-Cartwright)

~~I'm usually pretty good at remembering. I used to be good~~
~~in knowing tax sections, I've forgotten them all, as a result~~
of tax reform.

Mr. Shibley: I think you are looking for Page 13.

This is the April 10 memorandum of Candy-Mink which was a summation of all the data on the four submissions.

Mr. Anson-Cartwright: I concur with Mr. Mink's views, I guess, in this regard. In his draft confidential report of April 10, 1972, he says -- and I should probably just quote this because it's basically ^{as I say,} ~~the same~~ my own views -- "The tax advantages available to the developer could have a net effect lowering the financing cost to the developer. By retaining ownership, the developer takes advantage of capital cost allowances that would normally not be available to Hydro. The effect of this on the agreed annual rental rate would depend on the specific circumstances of the developer, his willingness to negotiate mutual benefits and his prospects of tax deferral."

Now, that is ...

Mr. Walker: Would ^{it} the tax benefit be the same for all developers? Would there be a difference?

Mr. Anson-Cartwright: No, it would not necessarily, and I think later on in my report we will see that -- pardon me, for all developers -- no, even then, not necessarily the same. It depends on the particular position of the developer.

Mr. Walker: Well, the only one we are really talking about is capital cost allowance, are we not?

Mr. Anson-Cartwright: Basically, yes, capital cost allowance.

Mr. Walker: So, if capital cost allowance is available to one, would it not in all likelihood be available to all?

~~It would be available to all.~~

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M-R:

I agree to perhaps a different
silent although I'm not prepared to *accept that* at the moment.

Mr. Genest: Not under ~~the~~ tax reform.

Mr. Walker: What?

Mr. Genest: Well, I'll let Mr. Anson-Cartwright
answer. I'll let the expert answer.

Mr. Anson-Cartwright: I think that we can deal
with that later but the answer is that competing developers
might be in particularly or completely different tax positions.
I can think of a lot of areas where they would differ.

Mr. Walker: But there nonetheless would be—if
there is a capital cost allowance available to one, it would
be available to all four or five?

Mr. Anson-Cartwright: In theory, ~~and~~ every developer
can claim capital cost allowances provided he owns depreciable
capital property, yes.

Mr. Walker: The only difference might be the
extent?

Mr. Anson-Cartwright: That's right.

Mr. Bullbrook: But as I understand that evidence
it is that extent that becomes a negotiable item.

Mr. Genest: And bear in mind that ~~our~~ our position
is that it is just not available ^{period}, on this deal.

Mr. Chairman: Mr. Newman?

Mr. ^{W.}Newman: Mr. Chairman, and Mr. Anson-Cartwright,
are you a tax expert too? I mean ~~on the~~ income tax ^{on} ~~the~~ question
would be: Do you feel that the developer in this case would be
entitled to ^a capital cost allowance?

Mr. Bullbrook: That is really a toughy. That's
really bad, William.

Mr. Chairman: I wonder whether he has looked at
the books to be in a position to answer that question.

Mr. Renwick: Let's ~~and~~ just wait.

Mr. ^{W.}Newman: Well, he said he knew all the
sections.

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M.R.

Mr. Chairman: Well, I don't mean that he's not capable of making an opinion on it but ...

Mr. Renwick: Mr. Chairman, I take ^{it has} Mr. Genest's interjection originally was simply as a warning flag and was not designed to precipitate something which we are entering into which everybody recognizes is significant.

Mr. Genest: I agree that we can deal with that as we go along.

Mr. Renwick: Yes.

Mr. Anson-Cartwright: I would like to answer your question, Mr. Newman, but I would prefer to defer it.

Mr. Shibley: Well then, you go on in respect to that matter, however, and I think the only point you are making at this juncture is that there was no follow-through with the developers by Hydro or there doesn't appear to have been as to the question of tax advantages accruing to them being a circumstance which should have been part of the negotiating process?

Mr. Anson-Cartwright: That's right. Ontario Hydro's employees, as evidenced by this memorandum by Mr. Mink, seemed at the time to recognize that there was this income tax advantage ~~or I shouldn't really call it an advantage possibly~~

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D.L.

H 2582-1

(Mr. Anson-Cartwright)

~~shouldn't really call it an advantage, possibility~~
shouldn't really call it an advantage, possibility ^A I don't really regard it as an advantage per se ^A and I would have thought that the developers also recognized it. And so I say that both parties should have taken it into consideration in their negotiations and it depends on how hard one side bargains vis-à-vis the other.

Mr. Shibley: Yes, all right. Well, if we go on to the next topic on page two, ^{rents} to be paid by Ontario Hydro over thirty years, you mention that the total rents to be paid ~~x~~ by Hydro over the period, "net of rents paid Ontario Hydro by Canada Square for commercial space, assuming a rental of \$4.92 a foot and the lease of the commercial areas at \$6.00 per foot, ~~it~~ will be in the order of \$162,000." ~~thousand million~~

Mr. Anson-Cartwright: \$162 million.

Mr. Shibley: \$162 million, ~~dollars~~, I'm sorry.

Mr. Anson-Cartwright: That's right.

Mr. Shibley: Now then —

Mr. Anson-Cartwright: There is one minor comment that I would have on there so that it's not misleading. The \$4.92 per square foot is the grossed up amount; you recognize that net of the contract per se only talks about \$4.84 per square foot, but it's basically \$4.90. — We're talking about the same numbers, Mr. Nastich and I agree on the figure of \$162 million, I believe.

Mr. Shibley: Thank you. He's nodding his head in agreement with you.

Mr. Anson-Cartwright: Thank you.

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Mr. Shibley: As a matter of fact there is very little that he hasn't nodded his head about.

Mr. Chairman: You'd better hold that head still, Mr. Nastich.

Mr. Genest: Oh, I've got him programmed.

Mr. Anson-Cartwright: In view of the ~~late~~ delay, he's nodding at the wrong time obviously.

Mr. Shibley: Would you carry on with the next paragraph, please?

Mr. Anson-Cartwright: Well, I'm really dealing with the possibility ~~and~~ the fluctuations in the rents. There are decreases in the rents if there is a decrease in the interest rate below 8%, and I think testimony now indicates that a decrease below ~~8%~~ 8% is unlikely, in view of the terms of the commitment with Prudential. There is a further reduction of 30 cents per square foot per annum for one or more vacant floors or subleased space. Fluctuations, as I said before, in foreign exchange are taken into account, both up and down, and there can also be a reduction in the ~~rental~~ rental rate if the appraised value of the building at the end of construction is less than \$44.4 million ~~dollars~~. The other side of the rental rates is that there can be an increase by the ^{es}escalation ~~in~~ ~~and~~ maintenance costs over the base year and fluctuations, as I said before, in foreign ~~xxxx~~ exchange.

Mr. Genest: In the interests of precision, would it not be better to say that the rents may be reduced by an increase in the exchange rate?

Mr. Chairman: Could you answer that?

Mr. Genest: And vice versa.

Mr. Anson-Cartwright: Oh sure.

Mr. Shibley: Then you go on with the next paragraph and make reference ~~to~~ to the fact that "the scope of profits which might accrue to a developer under a lease-purchase agreement where amounts being paid over a thirty-year term are in the order of \$162 million could be significantly greater than the profits which could accrue if a building were being constructed for say, \$45 million."

Mr. Anson-Cartwright: I think that particular sentence might be misconstrued and I should perhaps clarify it. All I'm saying is that there is more scope for profits in an agreement involving \$162 million over a term ~~than~~ there may be more scope ^{than} in the actual construction of a building for \$45 million. The ^{ob}verse of that, of course, is there may be more areas of risk exposure for a developer — maintenance costs and so forth. The ^{are} both sides of every coin.

(Tape 2583 follows)

~~the both sides of the~~
~~the both sides of the~~
Mr. Chairman: Could you come back, Mr. Genest, to the point you're making, ~~making~~ that more precise, would you give me the changes that you —

Mr. Anson-Cartwright: I could answer it for him. He's saying if there's an increase in the exchange rate —

Mr. Chairman: Now whereabouts are we —

Mr. Anson-Cartwright: The 3rd line of the 3rd paragraph on page 2. If there's an increase in the exchange rate, then you're going to have a reduction of the rental.

Mr. Chairman: I have it, thank you.

Mr. Genest: And perhaps the second last line of the same paragraph.

Mr. Anson-Cartwright: The second last line, ~~It says,~~ *It follows* if you have a decrease, you are going to have, pardon me, yes, if you have a decrease, you're going to have an increase in the rental rate.

Mr. Shibley: All right. Can we go to page 3.?

Mr. Chairman: We haven't got page 3. I'm wondering what time we'll take our break.

Mr. Shibley: I think we could deal with it before one certainly. How do you feel?

Mr. Chairman: I'm just wondering where the best place strategically is to break.

Mr. Shibley: It doesn't matter.

Mr. Genest: I'd suggest, Mr. Chairman, if we're going to deal with profits, we do it all at once.

Mr. Shibley: Okay, let's leave it.

Mr. Chairman: So, I would suggest, then, that we break now, which is —

Mr. Bullbrook: ~~We~~ *you* could give consideration to the out-of-two members in the length of time you're going to take for lunch if at all possible?

Mr. Chairman: You would like it to be shortened down?

Mr. Bullbrook: If we could now come back at 1:30, I'd appreciate it.

Mr. Chairman: Anybody object to the 1:30 hour?

We are adjourned until 1:30.

The Committee recessed at 12:⁴²~~40~~ O'CLOCK p.m.

(Tape H--2584 follows)

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC

Partner, Price Waterhouse & Co.:

R.M. Anson-Cartwright, F

The sentence beginning with the words
"I am very leery..." on Hansard page
H-2513-1, Sept. 13, 1973, was spoken
by Mr. Milan Nastich and not by Mr.
Chairman, as indicated.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Friday, September 14, 1973

Afternoon session

2584-2643

Sept. 14/73
1.40-1.45 p.m.
B.A.

H-2584-1

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee resumed at 1.40 o'clock, p.m.

Mr. Chairman: Ladies and Gentlemen, I call the meeting back to order. I see Mr. Anson-Cartwright is doing some additional ~~figuring~~ figuring over there. We will give him a minute.

Mr. Anson-Cartwright's associate, back there, is Peter Reid. I hope we won't need to call him but I see the two of them consulting from time to time.

Mr. Bullbrook: Don't even mention it.

Mr. Chairman: Well, it was just so that his name would be entombed in the records here.

Mr. Genest: You ~~are~~ ^{are a} happy ~~gift~~ ^{gift} of expressions.

Mr. W. Hodgson: We are all going to be.

Mr. Chairman: Mr. Shibley.

Mr. Shibley: Yes, I would like page 3 of the memorandum distributed, please.

Mr. Chairman: Now we have to give our clerk a minute.

Mr. Shibley: Now, Mr. Anson-Cartwright, on page 3, you proceed to deal with certain aspects of the investment of Hydro in the new head office building project by Canada Square. I take it that here you are looking at how much money is Canada Square putting up, so to speak, in terms of the construction of the building, pending its construction, and also, what it might have left in, if anything, at the completion of the building. Would you please deal with that now?


Mr. Anson-Cartwright: First of all, I try to calculate the profit to the developer ~~of the~~ resulting from the agreement, and when one calculates the profit, they also try and calculate what the return on investment might have been. In other words, I think you have to look at the profit in relation to the risk, and my understanding is that in the agreement there is no specific requirement that Canada

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1.40-1.45p.m.
E.A.

(Mr. Anson-Cartwright)

Square make any financial investment per se, although they were required to segregate \$2 million, either in a separate account or in short-term paper. Now, in fairness to Canada Square, I should point out that they were, in fact, selling expertise, they were selling know-how, services, and so forth. So that they have made an investment per se, but it is not a financial investment, it is an investment in effort, time, know-how and so forth.

Then I looked at, next, the security that Canada Square may have had to put up, what guarantees and so forth, and it struck me that the developer could ^ffinance the entire construction of the building based on the lease commitments of Ontario Hydro and the security of the property. Now, I am not using security in the legal term, I am just saying the financing could be arranged based on the lease commitments, and this lease



(Tape H-2585 follows)

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1:45 - 1:50 p.m.
D.L.

(Mr. Anson-Cartwright)

~~This lease~~ document is rather a unique one; I've never, —
I don't think there are many like it in Canada. It has,
as you've probably heard the term, a "hell-or-high-water"
clause so that the lease payments are made directly to
the ^{debtor} ~~lessor~~ of the developer, of the lessor.

Mr. Bullbrook: Are you inferring that that is
~~that~~ relatively or comparatively unique, that type of
arrangement?

Mr. Anson-Cartwright: It is a unique feature of
this particular contract.

Mr. Bullbrook: Your phrasing is good and I just
wanted to make sure. It's unique in the context of this
document. ~~It's unique in the context~~

Mr. Anson-Cartwright: It's unique in the context
and I wouldn't say that ^{it} not every lease certainly would
have a provision that makes the lessee's obligation to
pay rent absolute and unconditional.

Mr. Shibley: Which is the obligation of Hydro
under the lease in this question.

~~Mr. Walker~~

Mr. Anson-Cartwright: You know, I think that this
is a legal matter, I'm getting slightly out of my field, *of course* —

Mr. Bullbrook: I'm sorry. Then just forget about
my question. Go ahead, sir.

Mr. Anson-Cartwright: I don't want to appear
legalistic in any way, but I'm just saying that normally
there is a provision that the rent be paid subject to
the enjoyment of the property by the lessee, etc. etc.

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D.L.

Mr. Walker: That still applies to part of the amount.

Mr. Anson-Cartwright: Oh yes.

Mr. Walker: You are ~~se~~ separating, of course, the amount that's payable directly to Prudential.

Mr. Anson-Cartwright: My only point here is that I'm talking about the investment in the project by the developer. And I'm saying first of all, that it does not appear to be an equity ~~a~~ investment required by the developer ^{- I mean it is not spelled -} out in the documents he may be required to do some additional financing and make some equity investment, but it doesn't appear in the documents. Secondly, I am saying that on the strength of these lease commitments the developer could obtain financing to completely finance the construction of the building, the \$45 million, ^{he} he could mortgage out.

Mr. Walker: There is an equity, is there not, up until 1975, because money has to be borrowed from the interim financier and the person responsible is the contractor, not Hydro, although there is an obligation to Hydro to take over or sign the lease at that time. So in the meantime, there is an equity. He is on the hook for three years for \$45 million, or for what may amount ultimately to \$45 million.

Mr. Anson-Cartwright: Let me say that I don't regard that as an equity investment, that those predevelopment costs are covered in the \$45 million borrowings.

Mr. Walker: Those borrowings are made from Moog's own financier.

Mr. Shibley: No, that's not right, Mr. Walker. ~~The~~

Mr. Walker: The Bank of Montreal?

Mr. Shibley: The Canada Square Corporation during the period of construction can encumber the building for their cost of the construction, less \$2 million. So even during the period of construction Canada Square need not ever be at risk, so to speak, in terms of equity beyond \$2 million.

Mr. Walker: Can they be sued on the covenant?

Mr. Shibley: Well, the point of the matter is the building is up for —

Mr. Walker: But can they?

Mr. Shibley: Well ~~now~~ what good is the covenant? The only asset that's in the company, as we understand it, is some cranes and this building.

Mr. Walker: How much are the cranes worth?

Mr. Genest: Close to \$2 million.

Mr. Shibley: Well that's what I say, ~~in~~ the \$2 million is the extent of their exposure. The building stands as security. But I think, Mr. Anson-Cartwright, you can make the point as to what you really mean —

Mr. Finlayson: I'm sorry Mr. Shibley, but why do you assume that when we make a loan from the Bank of Montreal that we are not at risk? You don't know what the arrangements are between the Bank of Montreal and Canada Square and what other security we would have to put up in order to get that kind of interim financing. I don't think it's proper for you to suggest that there is no risk to Canada Square up until this building is completed to the satisfaction of Hydro, because there is, there's a very serious risk.

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1:45 - 1:50 p.m.
D.L.

Mr. Shibley: Well, I think we are off topic in any event, Mr. Finlayson, and if the witness may ^{be} granted to go on and answer the true question and really that's directed to how much equity at any given time is in this building at the instance of Canada Square.

Mr. Anson-Cartwright: My comment, I recognize Mr. Finlayson's point that there may be a risk during the construction period. My general comment is, there is not a substantial equity investment by the developer and that

~~on the~~

(Tape 2586 follows)

September 13th, 1973

1.50 - 1.55 pm

2586 - 1

AA

(Mr. Anson-Cartwright)

~~investment by the developer and that~~ on the security of the lease agreement, he could, in fact, obtain complete financing of the construction of the building.

I recognize also that there is a down-side risk to the developer, that the building costs could exceed the appraised value, as appraised by Chaffe, MacKenzie and Ray, I believe it is, at the completion of construction. For example, if the building costs exceeded \$44,400,000, there is a risk to the developer to that extent.

Mr. Walker: What kind ^{is} ~~is~~ down-side?

Mr. Deans: Can I ask you a question?

Mr. Walker: Will you define down-side?

Mr. Anson-Cartwright: If I ^{will} define down-side, it's going that way. I can —

Mr. Walker: I appreciate that, but I am trying to elaborate on the word down-side in ~~a~~ manner that is meaningful to me, which is — the word isn't ~~used~~ is pointing.

Mr. Anson-Cartwright: I am saying that the developer is exposed, that he would have to meet financial commitments, borrowings and so forth, and it's almost tantamount to an equity investment. He is guaranteeing something or he is — exposure, I think is the best — from a financial viewpoint, ^{if} he does not perform —

Mr. Walker: I have a little difficulty appreciating what the extent of down-side is. Now is ~~there~~.

Mr. Anson-Cartwright: I'll put it right in numbers. If the construction of the building costs \$50 million, he is committed to \$44,400,000 and his ~~own~~ down-side risk is \$5,600,000.

Mr. Walker: I appreciate exactly what you are saying and I know what that means. However —

Mr. Anson-Cartwright: That's what I am saying. That's my point.

September 13th, 1973

1.50 - 1.55 pm

2586 - 2

AA =

(Mr. Walker)

Mr. Walker: However, what is the ~~the~~ extent of down-side? Is there a possibility? Is there a probability? You know, we have an inflation today.

Mr. Deans: He is not in a position to tell you.

Mr. Walker: He is in a position to give an assessment.

Mr. Genest: I don't think he is in a position to assess the degree of risk. I think that he recognizes that there is a risk and that's all we need. He is not a builder. He is not.

Mr. Walker: Now, he is the one who said it. All I am trying to do is put some handle on the degree of risk that he has to see if there is a measure to it. *I like to set out the probability's ~~the~~ and say there is a 60 percent chance*

Mr. ~~Walker~~ Anson-Cartwright: Well, I would like to. I could make this one comment that ~~we~~ we must view my report as taking into consideration facts, figures, etc., at a particular point in time and that is basically, at the time of ~~the~~ executing the documents, October 18th, 1972, I believe it was.

Mr. Walker: Well, has that risk depreciated today in the interim?

Mr. Anson-Cartwright: Might I say that that is irrelevant to the execution of the documents.

Mr. Deans: That's right.

Mr. Walker: I appreciate that.

Mr. Deans: Can I ask you.

Mr. Anson-Cartwright: Subsequent events may prove that the developer has substantial risk. It may prove that this particular issue which we are discussing was a great deal.

Mr. Walker: Well, have they ~~discussed~~ *discussed* it.

Mr. Anson-Cartwright: It may come to that, but I submit that you have to look at the facts at the time of

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AA

(Mr. Anson-Cartwright)

entering into the _____

Mr. Walker: I don't disagree with that ~~point~~ ^{at all,} but _____

Mr. Shibley: Let him finish.

Mr. Renwick: Mr. Chairman, Mr. Walker is asking him to ~~quantify~~ quantify something that can't be quantified.

Mr. Walker: Well, has the risk increased since - what date, *of the contract* _____

Mr. Finlayson: I am going to join the objections too.

I don't, with great respect, to MR. Anson-Cartwright, think we ought to put him in that ^{kind of a} position, ~~and he is not a builder. He's really being~~ ^{He is not a builder. He's really being} ~~asked to assess evidence which has been brought before~~ ^{He just can't. Any more than you can.}

this committee and the members of the committee have got to make their own ^{judgement} ~~assessment~~ as to what has happened subsequent to ~~the~~ the execution of the agreement and what the risk was.

You have heard from a number of people on this point and I don't think we should ask Mr. Anson-Cartwright to weigh the evidence of the various witnesses and come to an opinion on this. I don't think that he would say it was within his sphere of expertise.

Mr. Chairman: I am smiling at the interchange ^{but} I am ~~disagreeing~~ agreeing with _____

Mr. Walker: In the face of overwhelming support from opposition, *question, Mr. Chairman!*

Mr. Shibley: To me you have got your signals crossed.

Mr. Deans: Can I ask one question? May I ask one question?

Mr. Chairman: Well, Mr. Deans has a question. *Is it* on this ~~understand~~ point?

Mr. Deans: No, it is not on ^{that} ~~the~~ point.

Mr. Chairman: All right, did you want to make a comment on that point?

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AA

(Mr. Deans)

Mr. Deans: ~~It's~~ It's on what Mr. Anson-Cartwright just said, *Though*.

Mr. Genest: I think ~~Mr.~~ Anson-Cartwright may have inadvertently said something ~~that~~ I am sure he didn't mean. He said ~~that the subsequent events are not relevant and I just want to put to him that they are not relevant insofar as they were not foreseen. If these subsequent events~~

2587 - 1 follows

H-2587-1

September 14, 1973
1:55 - 2:00 p.m.
B.G.

(Mr. Genest)

...he said that the subsequent events are not relevant, and I just wanted to put to him that they are not relevant insofar as they were foreseen. ~~not foreseen~~ If the subsequent events were ~~foreseen~~ foreseen —

Mr. Anson-Cartwright: With respect, Mr. Genest, I am just dealing with my task, which was to attempt to ascertain from the facts whether this contract was the best deal that Ontario Hydro could have obtained. And, in making that judgment, I don't think that you can look from hindsight and say, "wages, food costs, etc. have escalated". But also, you have to consider the whole agreement, and if there are these risks in construction costs, there are also potential upside benefits in increased rents in commercial areas. ~~And~~ I think you just have to consider, as I say, in fairness, both sides to every particular issue. And if costs escalate, surely, not necessarily in direct proportion, but surely ^{ci} commercial rents will escalate.

Mr. Deans: Can I just ask —

McCallum:

Mr. Genest: And the demand-supply situation.

Mr. Anson-Cartwright: Demand and supply, I'm sorry, not in proportion, please —

~~Mr. Deans: Thank you.~~

Mr. Chairman: Mr. Deans.

Mr. Deans: I just want to ask one question. Are you able to tell me whether the ~~sit~~ situation with regard to Canada Square being able to mortgage to the entire ~~to~~ value of the building, \$45 million, without any equity, is usual or unusual with regard to your ^x ~~experience~~ ^{other} in/developments that you have been involved in.

Mr. Anson-Cartwright: The question is very difficult to answer. I am not trying to equivocate in any way. In most financing of buildings it's not entirely usual to mortgage out completely. I think there is a - ~~excuse me~~ but we have a ~~note~~ —
excuse me -

Mr. Chairman: I don't think it was a comment that was meant to be heard by all of us.

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B.G.

Mr. Genest: A comment to me, I'm sorry, Mr. Anson-Cartwright.

Mr. Anson-Cartwright: I have in fact, though, seen a building situations where somebody erects/per se and mortgages it out completely; that's not unusual. And I think in sale-lease-back transactions it's possible, I don't know what the frequency is.

Mr. Deans: Yes, I want to just simply be clear. Are you simply saying to me that you don't know. *Because I'm*

Mr. Anson-Cartwright: No, I'm *not saying that.*

Mr. Deans: I want to be sure about it, because you say in some instances that you know it has been done and *others you don't*

Mr. Anson-Cartwright: Well, you are asking me if —

Mr. Deans: *So* I don't know whether it's ~~the~~ the normal practice or is an unusual practice. That's all I'm trying to determine for myself. *You have* experience in the field.

Mr. Anson-Cartwright: Are you talking about a lease-purchase transaction?

Mr. Genest: You should be talking about it.

Mr. Anson-Cartwright: You see your ~~question~~ question was the reason that I'm unable to give you a specific answer is that you have to talk about a specific type of transaction. I mean, if you are talking about erection of a building and the mortgaging out of it, it's different than a lease-back transaction.

Mr. Deans: Let me try it again then. Do you have any previous experience in a lease-purchase arrangement of this type?

Mr. Anson-Cartwright: @ Yes.

Mr. Deans: Okay, then the experience that you have, has it been normal for the —

Mr. Bullbrook: Don't use the word "normal" — *has it happened*

Mr. Deans: Well, ~~as far as you~~ all right, has it happened or is it frequent, I don't know, maybe you can tell me the frequency.

Mr. Anson-Cartwright: Take your mortgage out?

Mr. Deans: For your mortgaging the entire building without any equity involvement on the part of the developer. That's what I was really after, I am sorry.

H=2587-3

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B.G.

Mr. Anson-Cartwright: I would say that usually there is an equity participation by the developer.

Mr. Deans: And that is a —

Mr. Anson-Cartwright: It's usual for the developer per se to be at risk, yes.

Mr. Deans: Okay, that's all I wanted. That's really what I was asking. I ~~am~~ phrased it very badly.

Mr. Allan: Mr. Chairman, while we are on that matter, it has been my feeling all the time that there is nothing wrong with this type of ~~agreement in this instance. In agreement in that~~

~~Mr. Anson-Cartwright: No. No. No. I think that's correct. I would mean to say that this is a~~

(Tape H-2588 follows)

Sept. 14/73

2 - 2:05 pm

C.B.

(Mr. Allan)

~~Mr. Anson-Cartright~~

✓ agreement in this instance.

Mr. Anson-Cartright: No.

Mr. Allan: Am I correct in that?

Mr. Anson-Cartright: I think that's correct. I'm not meaning to say that this is something that is bad or anything.

Mr. Chairman: Gentlemen, I think ~~that is a very bad~~ our many interjections are detracting from perhaps the presentation of the report.

Mr. Walker: That doesn't in any way diminish the essentiality of it.

Mr. Chairman: I'm not so sure whether we gained very much in this last exchange. However, if you would proceed, Mr. Shibley.

Mr. Shibley: Thank you. Now, just finishing off this question of risk to the developer, that risk that you are referring to relates to how much money it is going to cost him to build this building.

Mr. Anson-Cartright: That's right.

Mr. Shibley: And if that cost happens to be greater — I'm sorry, yes, greater than \$45 million, he's a loser in that respect. Is that right?

Mr. Anson-Cartright: \$44.4 million?

Mr. Shibley: That's right, and if on the other hand the cost to him is less than that \$45 million, then there is a reverse circumstance depending on the appraisal of the building and we'll get to that latter. Is that correct?

Mr. Anson-Cartright: That's right.

Mr. Shibley: That's putting it very simply. Now, if we could go on and talk about the elements of profit, that is the next subject on your report, and you make reference to the fact that in your view there are four elements of profit

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2 - 2:05 pm

C.B.

(Mr. Shibley)

which might accrue to Canada Square over the 30 year term of its lease-purchase contract with Hydro, and then you say, "Some of these profit elements are difficult to quantify."

Would you take it from there, Mr. Anson-Cartwright?

Mr. Anson-Cartwright: Yes, first of all I say they are difficult to quantify because as I think officials of Ontario Hydro have pointed out, this is a package deal. What I have tried to do is dissect the package and put it into various compartments. The first element is the...

Mr. Bullbrook: Before you do that will you just read into the records so that it's shown, [✓] that your report says: "Some of these profit elements are difficult to quantify"; [✓] however, in my report I have estimated the profits to Canada Square Limited under certain reasonable assumptions excluding two of the elements of profits so that the profit analyses contained in this report would be conservative and would take into account any contingencies or additional expenses which might be incurred by the developer."

I just wanted for us to recognize that.

Mr. Shibley: To begin with, may I say when we are through I intend to have the whole document exhibited as part of the evidence, Mr. Bullbrook. But I'm glad you brought that to...

Mr. Bullbrook: I think it is important.

Mr. Shibley: Yes.

Mr. Bullbrook: ^{That} ~~that~~ he's taken that posture to begin with.

Mr. Shibley: That's right. I think you should expand on that statement.

Mr. Bullbrook: I don't really need him expanding on it. I just wanted us to realize that he had a predisposition towards [✓] conservatism in this respect, and I mean.....

Mr. Allan: You are always in favour of conservatism.

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2 - 2:05 pm

C.B.

(Mr. Allan)

~~(Mr. Anson-Carwright)~~

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2 - 2:05 pm

C.B.

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Mr. Allan: You are always in favour of conservatism.

--Mr. Allen--I

Mr. Bullbrook: If you are an example of it, I am.

Mr. Walker: At some point are we going to see the assumptions and the excluded assumptions?

Mr. Chairman: I don't know whether we'll see them today but at somepoint.

Mr. Shibley: You'll get it all.

Mr. Bullbrook: All right, let's go.

Mr. Anson-Cartright: I think if I might carry on. The first element of profit is in the area of the cost of financing, and according to my calculations the amount in the form of rental required to amortize the cost of construction of the head office building, ~~assuming a cost of \$34 per square foot for construction and an interest...~~

H2589 to follow

H-2589-1

(Mr. Anson-Cartwright)

assuming a cost of \$34 per square foot for construction, and an interest rate of 8 per cent, is \$3.24 per square foot. And, as I said earlier, I believe that officials of Hydro agree with me on that particular score.

Corporation)

In the estimate prepared by Canada Square Limited, the cost of financing was quoted at \$3.35 per square foot, and I think, as I have indicated in parenthesis in my report, Mr. McCallum's testimony indicates the \$3.24 and where he is dealing with the difference between \$3.24 and \$4.92. Now assuming that there is this 11 cent differential, that is, the cost of amortizing this financing is \$3.24, and there is a quotation of \$3.35, that would represent a profit element with respect to financing, and on a before tax basis there would be a profit in that particular category of \$3,986,000. Now I'm just mentioning that in passing that one of these elements is the possible profit in the area of financing, a quotation of \$3.35 and an actual cost of \$3.24.

Mr. Genest: Mr. Chairman, I wonder if I just want some guidance I have some questions to ask on all these matters. Is it your wish that I save them until he is finished the section? Would it be easier than if I interrupt.

Mr. Chairman: Yes, I think so, Mr. Genest.

Mr. Genest: All right.

Mr. Chairman: I think that would be the one that would be preferable.

Mr. Shibley: Would you like to carry on, Mr. Anson-Cartwright?

Mr. Anson-Cartwright: All right. In its proposal to Ontario Hydro, Canada Square estimated the maintenance cost at \$1.45 per square foot, and in the agreement there is an escalation provision whereby the maintenance costs in excess of that for the base year are borne by Ontario Hydro and not by the developer. Now I really don't know whether the maintenance cost of \$1.45 per square foot, quoted by Canada Square Corp. Ltd., ~~xxx~~ contains an element of profit. I have, for example, not been provided with any breakdown of the maintenance cost by that particular developer.

H-2589-²

Mr. Bullbrook: I'm sorry, Mr. Chairman, I know you don't want interruptions. I haven't been a party to too many. But this is very important from my point of view. Mr. Chairman, I am concerned you see because we are now looking at the possibility of profits, and these profits we will eventually have to weigh, having regard to expertise, because that was the beginning. If there is an equity participation ~~is~~, certainly, ~~was~~ ^{could be} something that characterized as an equity participation is ~~xxxxxx~~ expertise, right? Now I don't have any concern about expertise with respect to construction. The proof of that pudding will be in the building. But from your documentation that was provided to you, did you ... this is what is causing me concern .. you have just said now that, for example, you didn't have any background material that would show expertise as I understand it.

Mr. Anson-Cartwright: That is not my field of expertise in any event - maintenance cost - but I did have an opportunity to see the file of one of the developers, namely Y and R Properties Ltd. who, I believe to be highly reputable and have a real expertise in this area of maintenance. And their costs were broken down in minute detail.

Mr. Bullbrook: In detail. Well that is the point.

H-2580-1 follows

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DT

(Mr. Anson-Cartwright)

and their costs were broken down in minute --

Mr. Bullbrook: In detail.

Mr. Anson-Cartwright: In minute detail.

Mr. Bullbrook: All right. Well, that's the point --

Mr. Anson-Cartwright: By ~~xx~~ square foot and even by gross figures and so forth and I seem to recall that they came to a figure of \$1.34 or \$1.35 per square foot.

Mr. Shibley: Their then calculation of their cost was \$1.09, escalated to \$1.35 in their proposal for a base year 1974.

Mr. Anson-Cartwright: They had a figure at the time of the proposal of \$1.09 and you are right, they did escalate it to \$1.34.

Mr. Shibley: Yes, so that ^{for} a base year of 1974, but they broke down their costs in cents if you remember in that schedule -- the foolscap page -- penny by penny for elements of cost ^{to} ~~be~~ \$1.09 as at the time they were making up their submission. They projected forward for escalation and came up with \$1.35 figure as part of their proposal.

Mr. Genest: I think it's important, Mr. Chairman, I am sorry --

Mr. Chairman: Yes, Mr. Genest, while we have got into it, now is the time to make your point on this.

Mr. ~~Genest~~ Genest: It is important to note that the Canada Square base year is 1975.

Mr. Shibley: I realize that. That's why I said '74. This was '75. There's an extra year in there.

Mr. Chairman: I think we have also got to be careful in using Y and R as necessarily *our guide on that as well*.

Mr. Genest: Right. To compare them I think you would have to add another year's escalation to Y and R's figures.

Mr. Anson-Cartwright: ~~Un~~less somebody think I have made a Freudian slip, I have, as a guide to the committee, prepared calculations showing ¹⁰ ~~10~~ cents per square foot in the ~~the~~ maintenance cost component of the annual rental. I am not saying in that calculation that the amount of the maintenance cost should be \$1.35 per square foot, Mr.

(Mr. Anson-Cartwright)

Genest. I am not relying, for example, on Y and R's calculations. What I am trying to do is show that by a profit in this area of 10 cents, there is an increase in the overall profit to the developer of so much and I recognize that there could be no profit. I would hope that the developer ~~may~~ wouldn't enter into the agreement contemplating a loss in the base year, because he is going to be stuck with that loss for the rest of the 30-year contract and no prudent developer would contemplate a loss in the base year. He would use his best efforts to --

Mr. Finlayson: Well, Mr. Chairman, I have to object to this, with great respect because the base year is 1975. We have already heard from Mr. Zwig ~~Mr. Genest~~ that if he had to bid now, this year, that he would have to bid \$1.60 in order to have maintenance. Now, to take a figure of 10 cents straight out of the air and attribute it as a profit to my client is no more fair, I respectfully submit, than to assume a loss of 10 cents and make the same projection. It is ^{than an} ~~nothing more than~~ an arithmetical calculation.

Mr. Shibley: That's what he said.

Mr. Anson-Cartwright: I recognize that completely, Mr. Finlayson, and in my calculations I have said there is - I have excluded any profit in that area.


Mr. Finlayson: Well, why do we do this? I mean, I am worried about the press. They write that down.

Mr. Shibley: Oh, no. I think you have misconceived the things. Perhaps you had better explain. Again, ~~unfortunately~~ Unfortunately, the 10 cents happened to be the same spread as between Y and R. I think he was just giving a factor such that - let's say, that the profit was five cents, it would ~~be~~ be half the amount computed for 10. ^{if} Or a profit of 20 cents, it would be double. If there was a loss of 10 cents, it would be equal to the 10 cents. It is just a factor. Am I not right in that respect, Mr. Anson-Cartwright?

Mr. Anson-Cartwright: I think what we might do is read my wording and if it's not clear, I think I have said that merely as a guide to the committee I had prepared an alternative calculation of profit which might accrue to Canada Square, assuming that there will be a profit of 10 cents per square foot in the maintenance cost

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(Mr. Ansen-Cartwright)

component of the annual rental. ^Aand then I say it should be noted quite clearly that I am not in a position to quantify the profit element, if any, in the area of maintenance cost, and my analyses are prepared on the basis (a) ^{that} ~~if~~ there is no profit; and (b) ~~if~~ that there might be a profit of 10 cents per square foot. And I go on to say that while the developer should not have provided for losses in the area of maintenance cost, at the time of entering into the agreement, subsequent events 

(H-2591 to follow)

(Mr. Anson-Cartwright)

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(H-2591 to follow)

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2.15-2.20p.m.
B.A.

H-2591-1

(Mr. Anson-Cartwright)

~~I go up to say that while the developer should not have provided~~
~~for these in the area of maintenance costs, at the time of~~
~~contracting into the agreement subsequent events may result in~~
an underestimation of the maintenance costs for the base year.

Mr. Shibley: Just on that score, Mr. Anson-Cartwright, again, are we back to the point that this ~~has~~ has to be looked at from the point of view of the position of the parties at the time the contract was entered into.

Mr. Anson-Cartwright: Absolutely, yes.

Mr. Shibley: And I took your earlier answer to mean that when Canada Square quoted \$1.45, you would anticipate that it had computed that as an amount which, with a base year of ~~1974~~ 1975, would at least cover its maintenance costs.

Mr. Anson-Cartwright: That is correct.

~~XXXXXXXXXXXXXXXXXXXX~~
Mr. Shibley: And that, so far as assessing the transaction and whether Hydro made the best deal it could make, we have to have regard for the circumstances as at the time of the meeting.

Mr. Anson-Cartwright: At that time.

Mr. Renwick: Mr. Anson-Cartwright, is this one of the elements you excluded?

Mr. Anson-Cartwright: Yes, I did.

Mr. Genest: Excuse ^{me} ~~me~~ Mr. Chairman, it seems to me that there is another side to it that should be looked at and, that is, Hydro's estimate of what could happen in 1975. In judging whether they made the right deal ~~of~~ or not, even if they believed that the developer had under-estimated his development costs and that he would ~~lose~~ probably lose money on his maintenance, that is surely a very relevant consideration.

Mr. Chairman: I think if you have some estimates of that nature, that we can hear them perhaps subsequently, if you want to put them forward, Mr. Genest.

Mr. Genest: No, I say there is very strong evidence,

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(Mr. Genest)

I think, on the part of Hydro that they believed ~~in~~^{that} \$1.45 contained no profit.

Mr. Chairman : Maybe in comparison with Hydro's costs of maintenance.

Mr. Genest: Well, Hydro costs for maintenance were sky high.

Mr. Anson-Cartwright: As I say, I have prepared my calculations ~~in~~ on the basis that there is no profit.

Mr. Shibley: Thank you, Mr. Anson-Cartwright.

Mr. Chairman: You have done it two ways.

Mr. Shibley: Now, the third element of profit which you have considered ~~is~~^{is} ~~the~~^a builders' or construction profit. Would you go on with that, please?

Mr. Anson-Cartwright: Yes, I have said ~~that~~ that this is a package deal and ~~there~~^{that} has been an indication that the developer would obtain no profit on construction, ~~and~~ I have said that it is normal for a developer to obtain, or at ~~least~~ least, it is not abnormal for a developer to obtain a construction or ~~builder's~~^{builder's} profit which might be in the order of ~~the~~ three or four per cent of costs. Now, I think that I have put in parenthesis there that there might have been a profit of \$1.2 million, but I have excluded any builder's or construction profit from ~~this~~ this is the second ~~case~~^{piece} where I have excluded. I have said, "in my analysis there is no builders' or construction profit".

Mr. Shibley: Now, just to be clear on that, so that before we embark on the next facet of this thing, you are saying, therefore, that under item 1, on the financing, you calculated a before tax profit of just under \$4 million, on maintenance of \$1.45 ~~per~~

Mr. Anson-Cartwright: Over the term.

Mr. Shibley: You couldn't determine, you said, your calculation based on zero element of costs, and on builder's profit because there is no ~~information~~^{rma} available, you are going on the

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B.A.

(Mr. Shibley)

premise that there was no builders' profit.

Mr. Anson-Cartwright: That's right.
your

Mr. Shibley: So ~~XXXXXX~~ subsequent figures are predicated on those premises.

Mr. Anson-Cartwright: Right.

Mr. Shibley: If, in fact, ^a ~~the~~ builder's profit of four percent is included in the appraisal of this building, ~~that~~ that would amount to some \$2 million additional to the developer,

Mr. Anson-Cartwright: I suppose that is right. I haven't really taken that ~~very~~.

Mr. Shibley: I am not raising that as a question with you, but this ~~XXXXXX~~ committee fully understands the significance of what I have said because, whereas cost was originally intended not to include a builder's profit, we now realize that appraised value is intended by definition, to include a profit.

Mr. Anson-Cartwright: Yes, that's right.

Mr. Genest: I'd like to have a small quibble here.

Mr. Shibley: Sure.

Mr. Genest: Mr. Shibley uses the figure of four per cent. The ~~we~~ witness in his report uses the figures three or four, and relies for corroborative evidence on the evidence of Mr. McCallum, who says, two and a half to three and a half per cent, and Mr. McCallum said, in fact, "I would allow him two and a half per cent". So, I don't know how ~~we~~ ~~escalate that from two and a half to four per cent~~. It is sort of a foot ~~drag operation~~ which I don't understand.

Mr. Shibley: ~~Because I have the feeling that~~

(Tape H-2592 follows)

H-2592-1

(Mr. Genest)

~~I don't~~ how we escalate that from 2 $\frac{1}{2}$ to 4. It is sort of a bootstrap operation which I don't understand.

Mr. Shibley: ~~I have~~ ^{ing} I have the feel that there was repeated evidence that ~~it~~ ^{it} should be more like 4. That came from people like ~~Mr.~~ Manscomb Roy. It came from people like Tambllyn. I thought it was, and I thought McCallum's \$1,200,000 was based on a lower square footage basis, a smaller building area. I don't think it is worth spending time on.

Mr. Genest: No, I know, but, don't use the top.

Mr. Shibley: \$1,200,000 is what he put in. Okay. Can we go on to the next topic on page 5.

Mr. Chairman: I'm being harshly criticized by way of glances from Mr. Glen Hodgson for the interruptions that I have permitted.

Mr. E.G. Hodgson: I was wondering if Mr. Genest or the Hydro can give us the correct figure that Chaffe or some of these people might contribute to appraisal, ~~it~~ ^{it} might be very interesting to have those.

Mr. Genest: We have given you our best evidence. Mr. McCallum, who I think was qualified by Mr. Shibley as a person very experienced in dealing with contractors and developers, said his best estimate was 2 $\frac{1}{2}$ per cent.

Mr. R.G. Hodgson: I understood ^{that} wasn't appraisal evidence.

Mr. Shibley: In addition I think that there was the evidence of some ~~to~~ of the developers that a construction profit of around 3 per cent on a project of ~~this~~ this size would be ^{be} usual.

Mr. Genest: I haven't heard anything over three.

Mr. Anson-Cartwright: I think that Mr. Mink made an estimate of 3 per cent, the profit being \$1 million.

Mr. Shibley: Yes. All right. We'll go on with page 5 now of your report. You deal with this problem of the difference between actual cost and appraised value. And I might tell you that this has been the subject of much, much evidence before this committee, and any ~~an~~ enlightenment you might shed on the subject is welcome.

H-2592-2

Mr. Anson-Cartwright: Well, I'm just saying that there is another component of profit which would be the difference between the actual cost of construction and that cost of construction could properly, I believe, include a builder's or construction profit which ~~is~~ the subject of my last remarks, and the appraised value as indicated ~~in~~ or contemplated in paragraph 2 of the letter agreement between Canada Square and Ontario Hydro. If there is a difference between the appraised value and the actual cost of construction, provided the appraised value is at least this \$44,400,000 as determined by the evaluators, the excess of the appraised value over actual cost will be, of course, a profit to Canada Square because the rental of \$4.92 per square foot is in part based on the financing of \$44,400,000 at 8 per cent.

There is also one minor additional element of profit which is the difference ~~in~~ between \$44,400,000, and the permanent financing of \$45 million which Canada Square could obtain. Now I understand that \$600,000 cost is to cover certain start-up costs and expenses, that is my understanding.

Mr. Finlayson: Mr. Chairman, I think the witness has misunderstood the agreement, because as I understood it, the difference between the \$44,400,000 and the \$45 million was the fee that is payable to the mortgage company as a standby fee for making that 8 per cent available. So there is no element of profit there at all. It is sheer expense and is being incurred right now.

Mr. Genest: It is in the evidence.

Mr. Anson-Cartwright: The evidence on that.

Mr. Chairman: Any comment, Mr. Anson-Cartwright?

Mr. Anson-Cartwright: Yes, I do understand that to be — I've had a memory lapse — I did understand that to be some additional costs, I didn't know if they were financing or start-up costs, and that was to be...

They're
Mr. Finlayson: ~~the~~ standby. It is what we have got to pay the Prudential to keep that money available for us in 1975.

Mr. Genest: \$625,000.

Mr. Finlayson: \$625,000. Which is more than...

Mr. Shibley: Well, leaving the last sentence out of it because I agree with Mr. Finlayson in that respect, I don't know

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(Mr. Shibley)

whether there was evidence to that effect, but I think it clears it up.

Mr. Genest: Yes there is, Mr. Shibley.

Mr. Shibley: Thank you, okay, okay. Jesus, ^{bag} ~~that~~ they're hyper.

The point you are making with respect to the first part, and that is the significant portion of the statement, is that by adopting the appraised value ~~and~~

H-2593-1 follows

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2:25 - 2:30 pm

C.B.

(Mr. Shibley)

~~the first part and that's the significant portion of the~~
~~proportion is that it's about the appraisal value route the~~
appraisal might exceed the actual cost of construction.

Mr. Anson-Cartwright: That's right.

Mr. Shibley: ~~IN~~ interim finance and design fees, leaving a net profit in that area for the developer.

Mr. Anson-Cartwright: Right.

Mr. Shibley: So ~~long~~ as he can get it on appraisal.

Mr. Anson-Cartwright: Now in my projections I've shown costs to be ~~inexcessive~~ of \$44 million as well, We'll see,

Mr. Shibley: ~~Well~~, we'll get to those. It can work both ways, as you indicated, because the \$45 million is, so to speak, upset price, and if the building, if the hard costs of this building, what ~~Nyxax~~ Hydro thinks to be the elements in costs, exceed \$45 million then it is the developer that is going to be the loser.

Mr. Anson-Cartwright: That's right.

Mr. Shibley: Well, then will you go on with the next element of profit?

Mr. Anson-Cartwright: Well I think that is, as far as the elements go, I said there were only four elements.

Mr. Shibley: Yes. Well then, you then go on to deal with profit accruing to Canada Square pursuant to the agreement. Now in this respect you have estimated, I take it, the after-tax profits to be received by Canada Square under the terms of the agreement. Just for clarification, are the figures that we are about to deal with predicated upon the elements of cost, in terms of cost of financing, maintenance profit, builder's profit and differential between costs to construction and appraisal value, are those any part of the subject that we are now dealing with?

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C.B.

Mr. Anson-Cartwright: They all form part of the calculations, yes.

Mr. Shibley: And in that respect you have made allowance in your computations for a profit on financing of \$4 million, is that correct, \$3,986,000?

Mr. Anson-Cartwright: Right.

Mr. Shibley: And zero ^{0%} ~~or~~ 10 cents alternative figures on maintenance?

Mr. Anson-Cartwright: That's right.

Mr. Shibley: ~~Nothing~~ for builder's profit?

Mr. Anson-Cartwright: Nothing for builder's ~~profit~~ profit.

Mr. Shibley: Anything at all for the difference between construction and appraised value?

Mr. Anson-Cartwright: No.

Mr. Shibley: No. So that in fact only one, on your computations only the first of the four forms an element of the profit figures that you are now to deal with, with the exception that you do provide ~~and~~

Mr. Genest: The first ~~is~~ two.

Mr. Shibley: ~~and~~ alternative calculations as for maintenance, zero of 10 cents.

Mr. Anson-Cartwright: Well one of the alternatives does reflect a maintenance profit.

Mr. Shibley: That's what I say.

Mr. Anson-Cartwright: Yes.

Mr. Shibley: ~~You~~ You've done it both ways.

Mr. Anson-Cartwright: That's right.

Mr. Shibley: One calculation contains only one of the elements in the profit of those four, the other calculation contains the two. Now would you go on and deal with that please?

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C.B.

Mr. Renwick: May I just get that clear referring to that part that Mr. Bullbrook had quoted into the record, "I've estimated the profits to Canada Square Limited under certain reasonable assumptions ^{excluding} ~~excluding~~ two of the elements".

As I understand it now, one estimate is based on excluding three elements and one estimate is based on excluding two elements. Is that now my understanding?

Mr. Anson-Cartwright: That would be a fair assessment, Mr. Renwick.

Mr. Genest: I think there is another element that's in the calculations, that may be helpful ^{to} ~~to~~ the committee to know. There is an assumption of profit on commercial space. Am I not correct on that?

Mr. Anson-Cartwright: That's right.

Mr. Renwick: Perhaps we could just get this ~~very~~ perfectly clear so that we are not all at cross-purposes.

Mr. Anson-Cartwright: I think that's a good idea. I wonder if we might ~~and~~ pass out schedule one, I think that that would help immeasurably, Mr. Shibley.

Mr. Chairman: I guess we better rely on you.

A member: ^{Can the basic elements} also be segregated?

Mr. Shibley: That's page 21.

Mr. Bullbrook: Do you think we could ~~xxxxxxx~~ ^{now have} the ~~xxxxxxx~~ ^{rest of it}

Mr. Renwick: ^{We have passed} ~~xxxxxxx~~ the point of no return now, I would think so.

Mr. Genest: I would think so.

Mr. Anson-Cartwright: I would think you would be.

Mr. Shibley: Are you happy enough now to have it all distributed?

Mr. Chairman: Mr. Finlayson that goes for you too.

Mr. Finlayson: Yes sir.

Mr. Chairman: The whole works.

Mr. Bullbrook: Yes we're getting somewhere we really need it now.

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C.B.

A member: Yes, we have finished books to be bound.

Mr. Renwick: It worked out terrific the whole thing.

A member: What page are the assumptions on?

Mr. Bullbrook: Your suggestion made eminent good sense.

Mr. Genest: I prefer we go to schedule two, first,

Mr. Chairman. Talking about present values.

A member: Page 11.

Mr. Genest: Mr. Chairman.

Mr. Chairman: Mr. Genest.

Mr. Genest: I make this request quite seriously

because if we go to schedule one I think we come to conclusions

~~because if we go to schedule one I think we come to conclusions~~ . . .

H 2595 to follow

September 14, 1973

2:30 - 2:35

D.L.

(Mr. Genest)

~~make this request quite seriously because if we go with~~
~~schedule 1 we think we come to conclusions~~ and I think on
Mr. Anson-Cartwright's own evidence the important *figure*
is schedule 2 where we have present values of what schedule
1 talks about. Is that not right, Mr. Anson-Cartwright?

Mr. Chairman: Well, Mr. —

Mr. Shibley: We're going to get it all *now*.

Mr. Genest: *We're getting all of it, yes*

Mr. Chairman: Mr. Anson-Cartwright, in that you are
the one that prepared it, which way do you think it most
fairly presented now? To go to schedule 2 or schedule 1?

Mr. Anson-Cartwright: What I think we should do is
finish page five then go to pages 11 and 12, which are basically
the assumptions, so that I can answer Mr. Renwick's ~~and~~ ^{or} straighten
out Mr. Renwick's question and then at the same time be dealing
with schedules 1 and 2.

Mr. Genest: *How about* ~~and~~ 5 and 6?

Mr. Shibley: Let's leave the witness to his own resources.
I think that this is terribly complex and difficult enough
without a lot of interjection or interruption.

Mr. Genest: I'm sorry Mr. Shibley, I quite agree.

Mr. Shibley: You just spoiled ~~the game~~ *the game!*

Mr. Bullbrook: Are we missing *any pages?*

Mr. Shibley: You should have as many as twenty pages
of the report.

Mr. Allan: ~~that's right~~ *that's right* we ~~should~~ *have* those.

Mr. Bullbrook: ~~That's right~~ *No, those are before.*

Mr. Shibley: O.K. Now we're back to page 5 —

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D.L.

Chairman
Mr. Carper: If the press will come to order, the Committee will proceed. Fine, Mr. Shibley.

Mr. Shibley: All right, you wanted to proceed on the basis of page five, completing page five, if you will carry on, Mr. Anson-Cartwright.

Mr. Anson-Cartwright: We are getting in to the meat of my report and I might say that I thought about the presentation of this particular area for some time. My view was that the best way to present the profit to a developer to the Committee was to take the present value of the future stream of after-tax profits and estimate that. And I estimated that at approximately ~~was~~ \$5.4 million. Now so that it wouldn't be misunderstood by the Committee —

Mr. Allen: What sheet is that?

Mr. Anson-Cartwright: Page 5, Mr. Allen. \$5.4 million. Now, so that everybody would understand what I was saying and wouldn't misconstrue that as being the profit over the term of thirty years, which would then not be in context, I also presented the, estimated the after-tax profit that would accrue over the thirty-year term, assuming an ~~x~~ investment of cash-flow at 8% and that needs clarification. In addition, I showed the estimated profit, assuming that the cash-flow, which is not invested at all, there is no investment of ~~the cash-flow~~ ^{the} ~~cash-flow~~.

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B.G.

(Mr. Anson-Cartwright)

~~... I showed the estimated profit assuming that the cash flow~~
~~which is not invested at all there is no new investment of the~~
cash flow, which in my view is not a reasonable assumption, but
I just presented all those figures so that you can become quite
clear of my findings.

Mr. Shibley: Just before you go on, Mr. Anson-Cartwright,
I want to be perfectly clear on this. On page 5 on 1(a) the figure
of \$17.5 million is found.

Mr. Anson-Cartwright: Yes.

Mr. Shibley: And that is the after-tax profit of Canada
Square over the full term of 30 years, based upon the investment
of cash flow at 8 per cent.

Mr. Anson-Cartwright: Yes.

Mr. Shibley: The second figure, of \$7,421,000, is the
estimate of profit to Canada Square, assuming that the cash flow
is not invested. Is that correct?

Mr. Anson-Cartwright: That's correct.

Mr. Shibley: And you said just a moment ago that in your
view what is your view as to whether that is a proper premise?

Mr. Anson-Cartwright: Well, I don't think that a
developer would merely put his cash flow in a non-chequing bank
account and I do not think that that is a reasonable assumption,
but it's there just so that everybody can be clear in their own
minds what the after-tax profit is.

Mr. Shibley: All right; I might advise the committee
that this is one area where counsel for Canada Square and Hydro
do raise an issue with the approach taken by Mr. Anson-Cartwright,
and ~~as~~ doubt will want to put questions in this area. At the
moment I am only ~~anxious~~ anxious to alert the committee and everyone
here that so far as Mr. Anson-Cartwright is concerned, the after-tax
profit over thirty years should be estimated at \$17.5 million.

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B.G.

(Mr. Shibley)

In deference to the point of view asserted by counsel for Hydro, the estimate of \$7,421,000[/] has been included on the basis—and the issue is whether it makes sense to anticipate that the cash flow would be invested at 8 per cent during the term of the lease, and we will be getting into that a little later.

Then, with respect to the third figure —

Mr. Genest: ~~Mr.~~ Mr. Shibley, the other issue is whether that cash flow is in fact available, because that depends on capital cost allowance.

Mr. Shibley: Yes, we will get to that also. That's a separate section. So there are a couple of issues revolving around these figures.

Mr. Finlayson: If you don't get the money, you can't invest it.

Mr. Shibley: Yes. Now then^e, and this may seem anomalous to all of us and I must say I'm looking forward to the explanation myself, but the third figure that is there, which is \$5,391,000[/], which is called the present value of the future stream of after-tax profits, is a ~~present~~ present value, which ~~is~~ is the present value of either of the \$17.5 million or \$7,421,000[/], and both Mr. Nastich and Mr. Anson-Cartwright agree that whether either figure is taken as the profit over thirty years, the present value of this contract is \$5,391,000. That's correct.

Mr. Genest: Subject to agreement on the assumptions^{an} ~~the~~ capital cost allowance^{ce}.

Mr. Shibley: Yes, all right.

Mr. Chairman: I understand that capital cost allowance—

Mr. Shibley: Leave that to one side for the moment.

Mr. Genest: It is vital.

Mr. Chairman: —^s it's the vital matter. Well, I think it's important to have that noted as far as the press is concerned now.

Mr. Shibley: All right; okay, now.

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B.G.

~~Mr. Chairman: The committee is anxious to find~~

~~Mr. Chairman: Would the committee~~

Mr. Chairman: I assume that the committee will ultimately get the truth. I ~~am~~ am concerned about what the public may get in the interval.

Mr. W. Newman: Mr. Anson-Cartwright, I'm ^{a little} ~~am~~ confused about on 5.2, ^{b/} because I have trouble with figures. This \$5,391,000 could Canada Square, provided a capital cost allowance is available, could he sell this? Could he ^{assign his interest} ~~assign his interest~~

Mr. Anson-Cartwright: That's basically what that figure is worth. That is what the benefit is to the developer. Now, I think that, under these assumptions, ~~I think that~~ when you say "could he sell the contract for ~~that~~ that value," I think that there would be a discount for risk performance and so forth. But ~~that's~~ that's what I consider it to be worth to the ~~average~~ developer.

~~Mr. W. Newman: Would there be a big discount risk on that~~
~~thing, would you think? Or is that an unfair question?~~

~~Mr. Anson-Cartwright: Are you thinking of buying it, Bill?~~

(Tape H-2596 follows)

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DT

Mr. W. Newman:

~~Mr. Newman~~ Would there be a big discount risk on that thing, would you think, or is that an unfair question?

~~Mr. Newman~~ Are you thinking of buying it, Bill?

Mr. Anson-Cartwright: I ~~was~~ guess the critical area at any point in time is ~~what~~ the maintenance costs are going to be. The ~~financing~~ financing costs seem to be fixed.

Mr. Bullbrook: It can't be sold in any event.

Mr. Shibley: This is a very important ^{point} that Mr. Newman has brought up actually and I would just like you to ^{involve that} ~~to~~ You are in effect saying that if a buyer came along to buy the contract, like today, and say "I will take over this contract from you" and providing capital costs allowance is available, that buyer would be expected to pay Canada Square \$5 million less ~~is~~ some discount for the contingencies that you've mentioned.

Mr. Anson-Cartwright: The only dispute I have with that comment is ~~that~~ ^{the} today. I think that's what he would have paid —

Mr. Shibley: At the time of making the contract.

Mr. Anson-Cartwright: —At the time of making the contract, ~~now~~ Now, at the time of making the contract, assuming completion of the building, ~~then~~ then you have to take into consideration maintenance costs and so forth in determining your risk, at any particular point in time when it might be sold.

Mr. Shibley: It might be worth less today having regard for escalation.

Mr. & Anson-Cartwright: That's right.

Mr. Shibley: Yes.

Mr. ~~Shibley~~ Allan: Mr. Shibley, could I --

~~Denest~~

Mr. ~~Shibley~~ I am sorry, Mr. Allan. It should be brought out, because Mr. Anson-Cartwright has very firmly stated that he is looking ^{at} it from the date of the signature of the contract, that the eight per cent financing was not firm. There was an element of risk to the developer that he ~~wouldn't~~ wouldn't get his money at eight per cent. Is that not a fair comment?

Mr. Shibley: Not at the time the contract was signed, I don't believe.

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DT

Mr. Genest: Yes.

Mr. Finlayson: *Oh, yes*

Mr. Shibley: I thought the rate was fixed on October 3rd.

Mr. Renwick: October 3rd.

Mr. Shibley: Well, October 4 was when the rate was fixed with Prudential. They didn't sign the documents until November 1st. I know they didn't ~~lose~~ ^{get} their commitment until November 8th, affirmed, but that's why I was interested in the sequence of the documents, but as at the time the documentation was made formal, I think that risk was behind him.

Mr. Finlayson: We went firm in July ^{at} \$4.92 and we sure didn't have ^{any} eight per cent money then.

Shibley:

Mr. ~~Shibley~~ That's a valid point, I think.

Well, if you will carry on then. You now are going to do an in-depth analysis of each of these figures.

Mr. Chairman: We are cutting out Mr. Allan here --

Mr. Shibley: I am sorry.

Mr. Allan: I only wanted to clear up something in my own mind with respect to that. I am not thinking of buying this, ~~45,000~~ \$5,391,000. That is really what one might expect to get from that contract, isn't it, and no one would pay ~~the amount~~ the full amount of what he expected to get from the contract. He would want to see some profit in there somewhere, wouldn't he?

Mr. Anson-Cartwright: This is what I call the benefit to the builder. This is what he can derive ~~from~~ *from the contract*.

Mr. Allan: What he can hope to get.

Mr. Anson-Cartwright: ~~Over~~ ^{but not over} the term discounted to the present. if you understand what I'm saying. It is ~~exactly comparable~~ ~~comparable~~ comparable to the \$7,500,000 over the term.

Mr. Allan: Yes, that is so but --

Mr. Anson-Cartwright: If the contract went on for infinity you might have ~~a large figure~~ *a large figure but it would always come back --*

Mr. Allan: I can understand that but I can't think that anyone would look at that as a reasonable purchase, the contract would be a reasonable purchase at \$5,391,000.

Mr. Anson-Cartwright: I think that's a fair comment.

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DT

(Mr. Anson-Cartwright)

I have said that a subsequent purchaser would discount it but this is the benefit to the developer on a present value basis.

Mr. Allan: With patience.

Mr. W. Hodgson: Is this present-day value?

Mr. Shibley: No, not with patience. That's his present-day value.

Mr. Allan: His present-day value.

Mr. Bullbrook: Isn't it, in effect, what he is saying here, to my simple mind, that here is a money-making machine, if you can say that, ~~that is the~~ premise ~~the~~ capital cost allowance and everything else that would produce over 30 years with the investment, that money-making machine would produce a cash flow of \$17.5 million and somebody might --

Mr. Shibley: No, after-tax profit of --

Mr. Bullbrook: I'm sorry, and after-tax profit of \$17.5 million and somebody might say --

Mr. Deans: ~~A Member~~ No, it wouldn't.

Mr. Bullbrook: With an investment ^{at} of eight per cent ~~it would~~ and I put in (b) also, but basically isn't Mr. Anson-Cartwright saying, "and if it was a marketable machine, a man might want to buy that machine to get that tax profit over that period of time but they might bargain as to what the price was," isn't that right?

Mr. Genest: ~~They~~ ^{you} would have to guarantee the machine would keep ~~or~~ going.

Mr. Allan: Well, ~~But~~ that's so, but.

Mr. Bullbrook: That's another contingency too.

Mr. Allan: ~~I don't think anyone would want to buy something and not get any good of it for 30 years, and looking at the~~

(H-2597 to follow)

{Mr. Allan}:

I don't think anyone wants to buy something and not get any good out of it for 30 years. Looking at the \$7,421,000, if the money was used, if this was a company, wouldn't they want to pay dividends?

Mr. Genest: Yes.

Mr. Allan: Sure. So the \$17,500,000 seems to me to be a kind of unrealistic figure.

Mr. Anson-Cartwright: I think we should clarify that dividend issue. Who owns the shares of the developer corporation?

Mr. Allan: Well, at the present time, it would be Canada Square, wouldn't it?

Mr. Shibley: Yes.

Mr. Anson-Cartwright: No. Canada Square is the corporation.

Mr. Shibley: Yonge-Eglinton own it.

Mr. Allan: Well, you are dealing with a particular case.

Mr. Shibley: It's a distraction, if I may say so, Mr. Allan.

Mr. Genest: Well, I don't think it is. I think those are very pertinent questions.

Mr. Shibley: The dividend question?

Mr. Genest: Well, what I think Mr. Allan is getting at is the artificiality of \$17,500,000, because on the same principle, the salary of an MPP of \$18,000, ~~he~~ ^{how} could assume that if he only takes \$6,000 to live, he would invest the remainder and he's really being paid \$26,000 a year. I think I would have a hard time of persuading any of you gentlemen of that.

Mr. Deans: Don't say that too loud.

Mr. Shibley: I would like Mr. Anson-Cartwright to evolve -- here again, I think this is where we lose out with this witness, if we just let him evolve in his own way, the three figures that he has set forth and we will get ~~to~~ to it.

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2.45-2.50 pm
V.H.

Mr. Chairman: I would just like to continue without interruption by anybody and let the interruptions come later on, but I am not going to tie the committee's hands in that way if there is a particular point. But let's proceed.

Mr. Anson-Cartwright: I wonder if we could turn to page 11 ~~and then~~ and then the schedules. On page 11, I have set out the assumptions. I have assumed first of all that the corporate income tax rate would be 50 per cent. The rate over the next few years is declining down to 46 but that gap will be filled by the province and I have assumed the corporate rate of 50 per cent.

The next assumption is the building areas and I think that's all factual. One million two hundred and eight thousand square feet of aggregate rental ¹⁶⁶ space. An assumed interest rate of permanent financing of eight per cent. For present value calculations, I have assumed that all funds, that is rental income, would be received at the end of the year, ~~but~~ in fact it would be received throughout the year, but I have just done a simple ~~—~~ or improved upon the calculation and made it simple.

I have assumed that the present value of calculations ~~are~~ based on an interest rate of eight per cent before tax. Now that rate is the same rate as the rate of permanent financing and I don't see that it distorts the calculations in any way.

I have assumed maintenance costs of \$1.45 per square foot with no profit element. I have assumed that the developer would be permitted to claim capital cost allowances, that is depreciation, at five per cent per annum on the diminishing balance basis. In fact, he may be able to claim on some pieces of equipment, ~~it~~ it is not a big issue, but at a higher rate, for example, for some machinery and equipment, 20 per cent on the diminishing balance basis.

(Mr. Anson-Cartwright)

Those are the fixed assumptions. On page 12, I have set out the variable assumptions, and they are that the cost of the building would be \$33 per square foot, \$34 per square foot, and \$35 per square foot. You notice that in the last one the cost goes above the \$44 million, \$44,400,000 but those are

H-2598 follows

H-2598-1

(Mr. Anson-Cartwright)

~~that was above the \$44 billion~~, \$44,400,000, but there is no change in the rental rate per square foot. I have made assumptions regarding commercial rent for the upper concourse and the ground floor. The first assumption is that the developer receives no profit from the commercial area. That is \$6 per square foot. The second assumption is that he receives a rental of \$10 per square foot, in which event he shares the amount over \$6 equally with Ontario Hydro.

The last variable assumption is that there is no element of profit in the maintenance charge and a profit of 10 cents. I have not, in the body of the report, referred to any calculations with a maintenance profit. Now, those gentlemen, are the assumptions.

Mr. Genest: I'm sorry, I didn't follow that last one.

Mr. Shibley: He said in the body of the report he never, — in none of his figures in the body of the report has he included a profit element on maintenance, so those —

Mr. McCallum: ^{What about} Page 7, then?

Mr. Shibley: I beg your pardon?

Mr. McCallum: What does page 7 reveal about the ^{possible profit?}

Mr. Anson-Cartwright: Pardon me, I should, — I meant to say in my conclusions, on page 5, I guess, I have not taken the profit into consideration. I do mention it, as you say, Mr. McCallum, on page 7.

Mr. Shibley: So we can take the figures on page 5 to be figures that do not include a profit for maintenance, is that right?

Mr. Anson-Cartwright: That's right.

Mr. Shibley: All right.

Mr. Genest: While we are on page 12 there is one other thing that puzzles me. It may puzzle members of the committee. I don't understand under assumption ^{(a)(ii)} ~~(a)(i)~~, it says "\$35 per square foot (no change in rental rate per square foot)". And the double asterisk says that "While the maximum rental payable ~~tax~~ by Ontario Hydro is fixed, subject to foreign exchange and maintenance cost increases, conceivably the cost of construction might exceed \$34 per square foot."

Mr. Anson-Cartwright: Yes.

H-2598-2

Mr. Genest: And I just [^] Oh, I think I see what you mean now.

Mr. Anson-Cartwright: I'm saying that the cost - I'm trying to serve both sides [^] I'm trying to say the cost could exceed

Mr. Genest: And the rent doesn't rise.

Mr. Anson-Cartwright: And the ~~rent~~ doesn't rise. This is favourable to Ontario Hydro, Mr. Genest.

Mr. Genest: Thank you very much.

Mr. Shibley: He's like Mr. Walker, he doesn't understand in order to have you repeat it two or three times.

Mr. Walker: Sounds like your questions.

Mr. Bullbrook: It's a good thing ~~it~~ this is the last day.

Mr. Chairman: Proceed sir.

Mr. Anson-Cartwright: On these assumptions, the after-tax profit over the 30-year term ~~are~~ ^{I have} estimated at \$17,500,000, [^] And I might say there that we have prepared a computer programme and we had innumerable calculations, and there were figures based on, assuming investment of cash flow at 8 per cent, which were significantly higher than the \$17,500,000. And there were ones that were lower, of course. The first four calculations on Schedule 1 are, I believe, representative; I believe that situation is a reasonable one.

Mr. Shibley: I just want you to expand on that because I think it is important for the committee to understand why you say it is reasonable. You seem to have seized on a certain set of assumptions, as the assumptions which were most reasonable to assume, and on those assumptions have come up with \$17,500,000 figure.

H-2599-1 follow

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2.55 - 3 pm

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AA

~~(Mr. Shibley)~~

~~most reasonable to assume and those assumptions have come up with the \$17.5 million dollar figure~~

Mr. Anson-Cartwright: Let's consider what the assumptions are in situation one.

Mr. Shibley: Now, you are looking at schedule one, page 21.

Mr. Anson-Cartwright: A better way to look at that would be to look at appendix A, situation one.

Mr. Shibley: Right.

Mr. Anson-Cartwright: Now, appendix A, situation one, in the bottom right-hand corner, you will see that that figure is \$17.5 million. ~~Now~~, the assumptions are that the rent per square foot before set-off is \$4.92, the maintenance cost per square foot is \$1.45, no element of profit in that area. That the commercial rent per square foot is \$10. ~~Now~~, when I say that I think this situation is reasonable, I think there was brought into evidence yesterday calculations by Mr. Nastich or officials of Ontario Hydro, that assumed various rents of the commercial space. I wondered if we might have a look at . . .

Mr. Shibley: YES, ~~HERE IT~~ is here.

Mr. Anson-Cartwright: If I might have a look at that exhibit.

Mr. Shibley: It is exhibit 226.

Mr. Anson-Cartwright: In ~~that~~ that exhibit there are seven different calculations. Assuming different rental rates for the commercial area, that is the ground floor and the ~~mess/mezzanine~~. My assumptions are that all of ~~that~~ that commercial area can be rented for \$10 per square foot. In Mr. Nastich's calculations, he had indications, "No rental at all of the commercial area" and I ~~THINK~~ that he excluded the bank space there ~~from~~ my review of that schedule.

Mr. Genest: No. There are two different figures.

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E.A.

(Mr. Anson-Cartwright)

\$480,000, which is not too dissimilar from my cash flow^W of \$495,000. His assumptions that the ground floor will rent for, it looks like, \$15.00, and the mezzanine \$8.00, produces a cash flow of \$540,000—\$538,99—something. That would produce a profit of about \$22 million.

Mr. Shibley: So that, again, there is a variable in there and you have attempted to come up with what you consider to be a mean or the best premise to proceed upon, ~~that is~~ ^{the most} reasonable.

Mr. Anson-Cartwright: That's right, and, as I say, these assumptions do not include^U builder's profit, and ...

Mr. Shibley: Nor any profit on maintenance.

Mr. Anson-Cartwright: Nor any profit on maintenance.

Mr. Shibley: Nor any difference in the value of the building as between cost of construction

Mr. Anson-Cartwright: Nor any difference ^{between} ~~in~~ the value of the building and the cost of construction.

Mr. Shibley: All right, would you carry on then.

Mr. Anson-Cartwright: Now, ~~this~~ ^{the} I would like to turn to Appendix "A", Situation ^(a). It shows the cash flow from this particular transaction and ~~then~~ we have to bear in mind that it is a financing transaction, it is a lease. The components of the transaction are ^{there is} rental income, there are expenses in the form of maintenance costs, interest on the debt of \$45 million, and principal repayments.

Mr. Genest: It ^{says} ~~is~~ \$44 million.

Mr. Anson-Cartwright: \$44,400,000, I believe.

Mr. Genest: ~~It~~ ^{it} Should ~~not~~ be \$45 million?

~~Yes~~ He's got to pay it back.

Mr. Anson-Cartwright: I'm not so sure that the calculations aren't made on \$45 million. Well, they are made on \$44,400,000. There is an income, ~~take the first year, there is an income before depreciation, that is the rental income, less expenses, of~~

(Tape H-2601 follows)

Sep 14, 1973
3.05-3.10 pm
V.H.

(Mr. Anson-Cartwright)

Take the first year, there is an income before depreciation, — that is the rental income, less expenses ^{of} \$875,000. Then I say there are no income taxes payable because the developer would be permitted to claim capital cost allowances, i.e. five per cent in the first year, of \$44,400,000. He would have a principal repayment to make, the effect of which would be that the income, less the principal payments, would be \$495,000 and that would happen for the first 15 years. You can see that in the later years, there is a negative cash flow, basically because there are substantial income taxes payable.

The total after-tax profits to Canada Square, ^{using that} ~~the~~ ^{column} ~~the~~ ^{dam, the} \$495,000, is, as shown in conclusion 1(a), \$7,421,000.

I have shown ^{is} the present value of that stream ^{\$54} ~~\$5.4~~ million ~~and~~ and I say that that is the benefit to the developer.

Now I have been asked to comment on the reinvestment of the cash flow. As I said, this is a financing transaction and in the first year, the developer has cash of \$495,000, ~~and~~ the question is, does he leave those funds idle or does ~~he~~ one take that cash into account in computing the after-tax profit resulting from the cash flow? It is quite clear to me that somebody owning a building, deriving ~~the~~ rental income and having debt, would invest this cash flow and I have used an assumption of eight per cent. He would not leave the funds idle or uninvested at no interest.

Now this cash flow is, if I could analogize, tantamount to an interest-free loan, and I think we would say if somebody lent me \$495,000 without interest, I am deriving some benefit. Now to prove that in another way, supposing the developer were to prepay his mortgage, he has \$495,000 in excess of his debt requirements for that particular year.

Mr. Genest: It's a closed mortgage.

Mr. Anson-Cartwright: I recognize that it is a closed mortgage. I am just trying to prove the point that the

(Mr. Anson-Cartwright)

developer would definitely invest the funds. The developer would, ^{or} the owner of the property, could prematurely pay the debt, the mortgage, reduce his interest expense and thereby still derive the same after-tax profit resulting from the investment of the cash flow that I have shown. I hope that's clear. Either you invest the funds at interest, or you pay off your debt which is bearing interest and reduce the interest costs.

Mr. Genest: *Or you buy a yacht!*
~~Before they pay you off.~~

Mr. Allan: That's the part ^A you know, I just don't understand that you would do either one of those and only either one of those.

Mr. McCallum: That's right.

Mr. Allan: You might want to build another Hydro building!

Mr. Anson-Cartwright: Precisely! That's a fine point. A very good point. What the developer would do ~~was~~ ~~would be to build another building~~

H-2602 follows

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3:10-3:15 pm

C.B.

(Mr. Anson-Cartwright)

the fine point, a very good point, what the developer would do would be to build another building and have another investment of some kind. This is the developer. Have another investment with this cash flow from which he would derive a return, and I have said that that return would be 8 per cent before taxes.

Mr. Allan: This is very true but it seems to me ~~that~~ the value of the money is the time that it leaves the corporation.

Mr. Anson-Cartwright: Well, I'm saying that no corporation would have an amount in its coffers uninvested at any particular point in time and let that accrue for 15 years uninvested.

Mr. Allan: I can't think of a bank statement that would be made up and would....

Mr. Anson-Cartwright: I recognize your point, but this is a leasing transaction. Where the property is ultimately sold to the lessee and you have to take into account in the interval the—you see you have an owner of a building, he still owns the building, he has debt and he has cash....

Mr. Allan: But he really doesn't have any debt.

Mr. Anson-Cartwright: Sure he has debt. This developer has debt of \$45 million.

Mr. Allan: I know, but who is responsible for that?

Mr. Anson-Cartwright: He is.

Mr. Allan: That isn't what Prudential think.

Mr. Anson-Cartwright: Well said, but in his financial statements he has...

Mr. Allan: He doesn't need to worry about that debt.

Mr. Renwick: He has to show it.

Mr. Anson-Cartwright: But he has that debt, and

the main point that comes into these statements is cost of that debt to him, and I'm saying he wouldn't let the interest costs mount up and at the same time have cash, very substantial, at the end of the 15th year he'd have \$7 million in cash.

Mr. Allan: But his course for 30 years is laid down.

Mr. Anson-Cartwright: His course is that he has at the end of the 15th year \$7 million in cash, if he does nothing with it.

Mr. Deans: May I ask —

Mr. W. Hodgson: Maybe he'll have to use some of it for the over-expenditure he's making on this building.

Mr. Deans: I may be naive as hell at this point but I really want to know what purpose it serves us to concern ourselves with what the developer does with the money that he gets as a result of the lease. I'm asking it because I read the ~~initial~~ initial page and from that point on the question has been rattling around inside my head, that shows it's a little empty. I don't really understand why we ~~it~~ should be concerned about whether he gets interest at eight per cent, 10 per cent, builds another building or what he....

Mr. Anson-Cartwright: Well, ~~Mr.~~....

Mr. Deans: Wait a minute now.—or what he gets with the money which is in essence his profit so to speak, as you have determined. Can you tell me that, and maybe I can listen again as I've done for the last hour without saying a word.

Mr. Anson-Cartwright: Fine.

Mr. Chairman: Mr. Allan opened the door for you, Mr. Deans, you are forgiven.

Mr. Anson-Cartwright: As I say, this is a special type of transaction, and what it is in effect is a sale protracted over 30 years. All right. Now, when you have a sale over 30 years you have to take into account the benefits that can accrue in the interval. Otherwise, you are not making a proper comparison with an actual sale ~~made~~ at a point in time.

Mr. Deans: Let me ask you then, if Hydro were to have purchased a building, market value \$45 million, would they have then taken into account as you are doing what the mortgagor would have done with the money that he would have received on the

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C.B.

(Mr. Deans)

cash flow during the 30 years of the mortgage?

Mr. Anson-Cartwright: NO, ^{don't} ~~as~~ would not. But that is
not analogous to this.

H 2603 to follow

H-2603-1

~~(b)(7)(D)~~

~~You would have received on the cash flow during the 30 years of the~~
~~period.~~

~~Mr. Anson-Cartwright: No, he would not. But that is not~~
~~relevant to this.~~

Mr. Deans: You'll have to show me because I don't understand

Mr. Chairman: Maybe you can help now, Mr. Shibley.

Mr. Deans: I need the help.

Mr. Shibley: That's why I feel, just..

Mr. Chairman: I think ~~there are~~ all ^{of the} laymen are....

Mr. Shibley: ^{They're missing the point.} If I may just point ~~up~~ up the issue.

Mr. Deans: Don't get to that point.

Mr. Chairman: I put myself in the layman's position in
regard to this.

Mr. Deans: I just don't understand.

Mr. Shibley: I realize that, and I'm glad it is clear that
you don't understand it, because it is important therefore that
we go over it, because it is a very cogent point and an issue that
is outstanding respecting whether we should be talking about
\$17,500,000 or \$7,400,000. Now basically what it comes down to,
and Mr. Anson-Cartwright will be more precise and technical with
you, is this. After the first year, if you look at Appendix A,
situation 1, after the first ~~year~~ year the developer has
received \$500,000 annual cash flow after loan repayments, that is
net after servicing his financing. Now what Mr. Anson-Cartwright
has said is that the developer, instead of ~~I~~ I might say the
developer would take that \$500,000 and reinvest it so as to
supplement his income, so to speak, the revenue generated by this
transaction. Now Mr. Nastich's point to Mr. Anson-Cartwright in
their discussions was, "Well, what if he spends the money on a ~~blonde?~~ blonde?"
was the example used, instead of reinvesting it.

Mr. W. Newman: That's right, that is what I want to know,
what happens then?

Mr. Shibley: Then he wouldn't get —

Mr. Deans: He's in real trouble.

Mr. Shibley: Yes, then he wouldn't get the supplementary
return. And the real question that this committee has to decide
is whether it is reasonable to anticipate that Mr. Moog is going
to spend \$500,000 on a ~~blonde~~ blonde —

H-2603-2

Mr. Finlayson: Let's stop that talk, it'll be all over the newspapers.

Mr. Shibley: Or whether he is going to reinvest it, such that after 15 years, Mr. Anson-Cartwright has said, if he doesn't reinvest it, he would have \$7 million on his hand^s, or he would have spent \$7 million on a ~~land~~ ^{block}. Now the point of the matter is...

Mr. Deans: Now wait a minute.

Mr. Shibley: This is putting it in layman's terms, and we'll get back to Mr. Anson-Cartwright.

Mr. Chairman: If you'll leave out the ~~land~~ ^{block} and I'm all for the analogy.

Mr. R.G. Hodgson: Mr. Chairman, I am wondering ~~whether~~ ^{whether} ~~Mr. Hydro~~ got a good deal or whether Canada Square got a good deal?

Mr. Bullbrook: You were asked the question.

Mr. Renwick: Mr. Deans asked the question.

Mr. Shibley: I'll finish this way. What we are trying to ascertain is the validity of the premise here, which has been adopted by Mr. Anson-Cartwright, in saying no developer would fail to reinvest the cash flow in each year as he realized it. So that within the term of the contract, not only does he get the annual cash flow after loan repayments of \$4.95, but that amount net after loan repayments, net after tax position, is reinvested, and that is how he comes out with the \$17 million figure. And the issue that you have to satisfy yourselves about on the evidence, as Mr. Anson-Cartwright is going to outline it to you, ^{is} ~~is~~ that a reasonable premise upon which to proceed, or is it unreasonable? And I'd like to ask the witness now in an expert way to develop...

Mr. Deans: Can I ask you one question, Mr. Shibley?

Mr. Genest: Mr. Chairman, I have a

Mr. Chairman: Just a minute, gentlemen...

Mr. Deans: Please, I'm not finished.

Mr. Chairman: Mr. Deans still has the floor, and then Mr. Genest...

Mr. Deans: I'm not finished. Until I'm satisfied I want to continue. I want to ask you a question ^{Mr. Shibley,} on the basis of your

H-2603-3

(Mr. Deans)

answer to my question. I understood everything you had said. I understood before I asked the question. I really did. What I am asking is, what business is it of ours ~~that Mr. Moog does with~~ whether Mr. Moog invests his money at 8 per cent, or doesn't invest his money at 8 per cent, whether he spends it on some fictitious blonde, or whether he puts it into bonds?

~~Mr. Shibley:~~
~~An Hon. Member:~~ A yacht, as some^{eb}body suggested.

Mr. Deans: That is what I want to know, because I don't question your figures, nor do I question the premise upon which they are made. I am just simply asking whether this committee has any—I don't want to say "right to know"—but whether this committee is correct in pursuing what Mr. Moog does with the revenue that belongs to him after Hydro has paid its rent.

~~Mr. Chairman: Let the witness answer the Mr. Deans' question.~~

~~Mr. Deans: That is what I am asking. And I don't understand~~

~~it.~~

~~Mr. Anson Cartwright: Well let me say, in analyzing.~~

H-2604-1 follows

Mr. Chairman: Let's let the witness answer, *Mr. Deans'*

question.

Mr. Deans: And I don't understand it.

Mr. Anson-Cartwright: Let me say in analysing a

financial transaction such as this, you must take into account the cash flow. This is not a profit, it's cash that is coming in.

The cash flow arises basically because of a claim for depreciation, a non-cash outlay or expense. At some particular point in time, you will see, for example, in the 20th year, there is not a cash inflow. There's a cash outflow and in these calculations as well, I have said that the developer would have to borrow funds at eight per cent. Now, it would be very material to Mr. Moog, or to the developer, if in the first year he had a negative cash flow. This would be a very — an indication of a very bad deal.

Mr. Deans: From his point of view.

Mr. Anson-Cartwright: From his point of view.

Mr. Deans: All right.

Mr. Anson-Cartwright: If he had negative cash flow, — profits, but negative cash flow, ^{which} ~~is~~ is possible [^] he would be in a very bad situation. Now, as I say, the ~~^~~ difficulty that you are having in comprehending these calculations —

Mr. Deans: I have no difficulty in comprehending the calculations. *I am asking the basis —*

Mr. Anson-Cartwright: O.K., difficulty in comprehending ~~Mr. Deans'~~ the theory.

Mr. Renwick: May I ask a supplementary question to try and clarify the point?

Mr. Chairman: I am not so sure that the witness is through answering this question. Let the witness answer and then I have got quite a few supplementaries.

Mr. Renwick: The point of my interjection, Mr. Chairman, is the same one my colleague agrees with. He understands what you are talking about. All of the words up to this point, you are talking and communicating precisely. All I want to do is try to put into a question as a ~~supp~~ supplement to Mr. Dean's question what I think we are trying to say. Now, assuming and recognizing the caveat of Hydro that there may be no capital cost allowance, assuming

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DT

(Mr. Renwick)

that that assumption is correct that there will be a capital cost allowance, I take it that the question is, ~~+~~ should Hydro have negotiated with Canada Square to participate in this profit by way of —

Mr. Anson-Cartwright: Reduced rental.

Mr. Renwick: Reduced rental, ~~but~~ I take it that that's —

Mr. Anson-Cartwright: That is what ~~has~~ is intended —

Mr. Renwick: — what the basic argument is. Is that, my understanding —

Mr. Bullbrook: That's it.

Mr. Anson-Cartwright: Precisely.

Mr. Renwick: And the assumption on that is that if the developer, property owner, lessor relationship is a partnership venture together that one of the elements which you share is the benefit. Now, I take it that that's the argument. Is that correct?

Mr. Genest: Mr. Renwick, you are moving it. I mean, that is a point, but it's another point. Because what we are dealing with, ~~and~~ Mr. Anson-Cartwright's views as to the profit that will be generated. *That's also another matter —*

Mr. Chairman: Mr. Renwick made that — (and
Mr. Renwick: Mr. Chairman, we recognize that ~~I~~ am

not talking about what the ~~quantum~~ quantum is that should have been subject to the debate ~~if~~ if it should have been subject to the debate.

~~But~~ I take it that the reason we are going into this is not that we give a damn what Canada Square does with whatever money it gets. All that I take it ~~they're~~ saying is asking the question, — should Hydro have had the benefit of some participation in this operation? Now —

Mr. Genest: That isn't Mr. Deans' question.

Mr. Deans: ~~It is~~ to this extent it is, that if ~~with~~, what Mr. Renwick is saying that he's asking the question, ~~should~~ ~~Hydro have benefited from whatever return on the investment that is to be made by Canada~~ —

(H-2605 to follow)

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3.25 - 3.30 pm

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AA

(Mr. Deans)

~~the money~~ "Should Hydro have benefited from whatever return on the investment that is to be made by Canada Square, which will show up as profit."

Now, I am saying, if that's what he is saying and we are in agreement, if Mr. Anson-Cartwright is saying that ~~that~~ that it is, in fact, a partnership and the money that is being invested is not only Canada Square's money, but Hydro's money, that the cash flow is not only Canada Square's cash flow, but Hydro's cash flow and ~~that~~ therefore, the result of those things, then being ⁱⁿ a ~~partnership~~ partnership, there should be a sharing in some way by reduced rental, as you might put it, of the profits made from the investment at eight per cent, Then I understand then what you are driving at and I will make my own judgement on whether that is right or wrong. OK?

Mr. Anson-Cartwright: I am saying that this is a sale in the guise ~~that would be~~ ^{without being} a derogatory term - in the guise of ^a lease, and you have to take into account the investment of the rental payments during the term.

Mr. Deans: As you would if you were making mortgage payments, because that's the point. If it is a sale in the guise of a lease - look, I don't care if ~~it~~ it takes until tomorrow now, because I have got to know, —

Mr. Bullbrook: I've got to get home.

Mr. Chairman: Mr. Deans has the floor.

Mr. Deans: If it is a sale - I know you do, Jim, and I don't really intend to keep it that long ^{but} if it is a sale in the guise of a lease, then what you are saying is that Hydro should benefit. They are buying the building and they are paying "X" numbers of dollars per square foot for that building and they should be able to get a reduced amount of the value of the building as purchase price, reflected in the rental, on the basis of the ~~seller~~ ^{seller} —

Mr. Genest: ~~Investing~~ Investing.

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AA

(Mr. Deans)

Mr. Deans: ~~Is that~~ investing the money that they get.

Mr. Anson-Cartwright: During the interim.

Mr. Deans: Is that ^a practice normally pursued?

Mr. Anson-Cartwright: YES, SIR.

Mr. Deans: That's what I want to know.

Mr. Genest: ~~Mr.~~ Chairman, I want to make something because I have a ~~earlier~~ report here handed over to us by Mr. Shibley, done by ~~Mr.~~ Anson-Cartwright, when he comments on this method, where he says this; "This method of evaluating investments is not a usual method and can be misleading because it compares the value of the income stream at the end of the period, with an investment value at the beginning of the period. It thus fails to recognize the time value of money."

Mr. Anson-Cartwright: Are these ~~my~~ mine?

Mr. Genest: Well, that's what I got from your earlier report. I think that's what you are talking about. Let me just go on a minute, because it seems to me that we are ~~on~~ off on an argument which will have no end ~~and~~ when you look at Mr. Anson-Cartwright's report, it ~~doesn't~~ makes no difference to the present value, whether you assume the re-investments of the cash flow or whether you leave it out, you come down to the same present value of this contract.

Mr. Anson-Cartwright: Right.

Mr. Genest: So, why go off on these theoretical exercises?

Mr. Bullbrook: Because our terms of reference don't necessarily just encompass present value. That's the answer to the question.

Mr. Genest: Well, Mr. Bullbrook, you just like that \$17.5 million and you won't let go.

Mr. Bullbrook: He hit the nail on the head and expressed for me my complete understanding of this exercise.

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AA

(Mr. Bullbrook)

As I understand it, it is a question for us to evaluate whether this formula should have been significant in ^{the} negotiations between the parties. Isn't that it, Mr. Renwick? Isn't that what you were trying to convey? That if there is a benefit in investing a cash flow that might have accrued, and I begin with 'if', if there is, then should have Hydro/taken that into consideration in negotiating? That's all I am getting from this.

Mr. Chairman: I think that's right. Now, Mr. Deans, are you *finished*?

Mr. Deans: I am finished.

Mr. Chairman: You are through? All right.

~~Mr. Deans~~

MR. Allan: Mr. Chairman . . .

Mr. Chairman: I have got Mr. Hodgson, Mr. Renwick, Mr. Walker, Mr. Newman in that order. And Mr. Allan, you are at the end of the list. By ~~all right~~ golly, *I am*

Mr. Allan: I ~~do~~ accept.

MR. Chairman: Mr. William Hodgson.

An hon member: He has gone.

Mr. Chairman: I am sorry. Mr. Glen Hodgson.

Mr. R. G. Hodgson: I will defer to someone else.

Mr. Chairman: All right, Mr. Renwick. In just a minute, *we* will pass ~~on~~ ^{then} to Mr. Walker.

Mr. Walker: Mr. Chairman, is there not an analogy with a party - let's take Hydro right now. It rents a building over in some street behind the present building. It leases, I believe, that particular building. ~~It entered into~~
a

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(Mr. Walker)

~~2000 street behind the present building, it leases, and I believe,~~
~~that particular building.~~ If it entered into a contract to purchase that building at some point in the future, and just for exaggeration let's take thirty years, ^{more} it decides to buy that building and enters into an agreement of purchase and sale for purchase thirty years from now, if that's possible, and in the meantime continues to lease it at some particular figure, say \$4.92, in determining the profit of the company who owns the building for the next 29 ~~or~~ or almost thirty years, in determining the profit of that company, would it be correct in saying the profit of that company is the accumulated profit invested at 8 per cent, after tax profit resulting from cash flow and investment thereof at 8 per cent? Wouldn't that be another accounting fiction?

Mr. Anson-Cartwright: This is not analogous, ^{what} you are saying is not analogous to this transaction. This is a sale ~~at this is~~ and a lease-back.

Mr. Walker: I know that. The principle you are applying is this ^{that} word "sale". But aren't you really, isn't ~~this~~ just an accounting fiction to come up with a \$17.5 million, so-called profit?

Mr. Anson-Cartwright: Can I explain why we have the two figures again, please?

Mr. Walker: Which two?

Mr. Anson-Cartwright: The \$5.4 million and the \$17.5 million and then I think that Mr. Genest will be in agreement with me. The present value, that is the value of this contract at the time of execution of the documents and completion of the building, is \$5,400 and I think we have agreement on that point.

Mr. Genest: Yes, assuming your capital cost allowance, which I think you've just killed by saying it's a sale.

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Mr. Anson-Cartwright: Assuming -- well, let's -- well, I didn't say it was a sale.
Some members: Yes, you did.
Mr. Vinlayson: ~~It's a sale~~ *A sale in the guise of a lease*

Mr. Renwick: Oh, now, now, wait a minute, ~~you~~ you aren't going to use the red herring of that ~~theory~~ *Section of the coming tax act.*

Mr. Vinlayson: No, I'm sorry.
Mr. Genest: No, but ~~that's~~ *that's an* important, I agree with that theory -

Mr. Chairman: Gentlemen, I have been noting that there is a ~~25~~ *50* fair amount of chit-chat at the council table. I know there has been every day, but I think it's a little disconcerting to the witness who has got a difficult task here trying to explain to us.

Mr. Genest: I agree; perhaps we could give him a cup of coffee, Mr. Chairman.

Mr. Chairman: Well, I wanted to ~~answer~~ answer these questions first.

Mr. Anson-Cartwright: I would like to, before we get off the point, I would like to make --

Mr. Renwick: We are not going to be off it.

Mr. Anson-Cartwright: No, I'm saying I would like to explain these calculations because I think that I can convince you of my particular point. The present value, assuming capital cost allowances can be claimed, is \$5,400,000. Now, that is the profit to the developer. The \$17.5 million is investment of cash ~~which~~ *is* net cash, because there are cash ~~in~~ inlays and cash outlays at 8 per cent, over the term. Now, when you discount ~~that~~ the earnings on the cash at 8 per cent, you come back to ~~the~~ \$5.4 million again. If you have ~~one~~ one dollar now, invested at 8 per cent compounded for the next ~~30~~ thirty years, and you try and determine the value of that now, it's still one dollar.

So, the \$17.5 million comes back to \$5.4 million. Now, if I could just carry on a bit more. The reason that these two

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(Mr. Anson-Cartwright)

figures are in my report is that it mustn't be understood that the \$5.4 million is the profit of the developer over the thirty-year term. It's the profit at the point of execution of the agreement.

~~It's the profit at the point of execution of the agreement.~~

(Tape H-2607 follows)

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(Mr. Anson-Cartwright)

In order to come, so that you would I think agree with me over the term of the 30 years, the profit must be something greater than ~~154~~ million ~~four~~. Now this is saying, so that somebody won't say, over a period of 30 years, the developer has earned ~~154~~ million ~~four~~ because that is not the case. Over the period of 30 years, he has earned something very substantially more.

Mr. Renwick: We understand.

Mr. Anson-Cartwright: And what he has at the time of execution of that agreement is a benefit of ~~154~~ million ~~four~~ which you will have to assess as to whether that was a reasonable contract for the parties to have entered into. That's my point.

Mr. Chairman: Mr. Walker still has the floor.

Mr. Walker: If a builder, perhaps under tender or something or other, acquired ~~154~~ million ~~four~~ in actual profit on building his building, then if that same builder by tender, takes his ~~154~~ million ~~four~~ and invested it at eight per cent ~~and~~ at the end of 30 years, in effect, he has got himself ~~175~~ million.

Mr. Anson-Cartwright: That's fair. That's fair. Now, we are squared ~~on~~. It's a fair analogy.

Mr. Walker: In a way, it's a fiction —

Mr. Renwick: I want to get on with it.

Mr. Anson-Cartwright: That's a fair analogy.

The sole reason I have those figures in that manner and I think you will agree with me its logical, now we are in agreement, is so that it won't be misrepresented that somebody made a profit of ~~154~~ million ~~four~~ over 30 years because then it appears minuscule. But, in fact, the most important figure is the ~~154~~ million ~~four~~, that is the ~~main~~

Mr. Renwick: No, that's not the point.

~~Mr. Walker:~~ ~~Mr. Allan:~~ That's the kernel. ~~the Allen of the party~~

Mr. Renwick: No, it isn't.

~~Mr. Buller:~~ No, it is not

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Mr. Chairman: ~~Let's~~

Mr. Anson-Cartwright: That is the point. The profit at a point in time, at the ~~2~~ time of execution of the agreement, is ~~35.4~~ million ~~less~~. I consider that quite salient.

Mr. Genest: I agree.

Mr. Newman: May I just ~~let~~

Mr. Chairman: No. Mr. Renwick is ~~let~~

Mr. Newman: I just have a short question on the same thing.

Mr. Renwick: Mine is on the same thing too and I am hoping that I can also get it clarified and help others. I am really addressing my remarks to counsel at the table and the Hydro officials.

My understanding really is in plain ordinary everyday hard-bargaining, negotiating terms, which has been the guts of the problem, whether Hydro bargained with Canada Square. I take it what we are engaged in doing is saying that, and I am not making any assumption as to whether it should have been this way or not, but the purpose of the exercise as I understand is, should, and ^{the} using the names simply to point up the ~~the~~ point, should Mr. Nastich and Mr. McCallum and Mr. Candy have sat down with the lawyer ~~for~~ for Canada Square and Mr. Moog and with Mr. Coles and said in the course of the bargaining, we have got a little projection here in front of us. ~~but~~ We have made certain assumptions here as to the benefit you are going to get, the range of the benefit ~~is~~ ^{\$7.4} ~~million~~ ~~over 30 years or to~~ ^{\$17.5} ~~million~~ over 30 years. These are the assumptions we have ~~made~~ made and we kick it into the hopper, how are we going to split it? Then Mr. Moog, Mr. Coles and Mr. Bradshaw would have had the argument that we are having here as to whether it was right to make these assumptions and whether you are going to get any capital cost allowance and all the rest of it. Now, is ~~that~~

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Mr. Renwick: This is not any attempt to put into a rigid format something which will in fact occur in the future. It is simply ~~the~~

Mr. Genest: No, its partly that.

Mr. Renwick: I am suggesting that if there is an element that I should be considering in addition to it, I am saying to you that at the mmment all that I can see in the exercise of this ~~is the~~

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C.B.

(Mr. Renwick)

~~that at the moment all that I can see in the exercise of this~~
is, should this have been a matter of bargaining negotiations?

Mr. Genest: Can I deal with that, Mr. Renwick?

Mr. Renwick: Yes.

Mr. Genest: The first point is that you have Mr. McCallum's evidence ^A which Mr. Shibley asked ~~me~~ I think that he not deal with in detail, but it's there ^A ~~that~~ in his opinion there is no capital cost allowance available to Canada Square.

Mr. Renwick: No, no, Mr. Chairman.

Mr. Genest: I think that's an important fact. *The second point*

Mr. Renwick: I recognize this, but no. Mr. Chairman, I want to say to Mr. Genest, I understand, and I understand you're going to be making the arguments for that, I understand that. All I'm asking you is whether it is your understanding that the point which is being made by Mr. Cartwright to us is that there should have been this kind of negotiation, or is it something else?

Mr. Genest: No, my understanding is that Mr. Anson-Cartwright is making that point but is also making the point that the profits reasonably expected, that Hydro should ^{have} ~~anticipate~~ ^A should have been derived from this contract ^{are} ~~the~~ the amounts that he says. It is ~~being~~ put forward on two basis ~~...~~

Mr. Renwick: Arrange,

Mr. Genest: That's right.

Mr. McCallum: No, even ~~more~~ more precisely ~~say~~ surely than that, he is saying precisely that the profit ~~that~~ derived from this transaction at the date of the signing of the contract is \$5 million some odd, and he agrees with you, that's what he's saying.

Mr. Bullbrook: No, not at all.

Mr. McCallum: Oh, come on. The witness is saying...

Mr. Bullbrook: Now just wait...

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Mr. Chairman: Mr. Bullbrook, no, I can't let you in here yet, I've been awfully rude to Mr. Allan, I'll put you on next.

Mr. Bullbrook: Well, I'm not going to have Mr. McCallum leave that on the record. He's excluded all possible types of profit.

Mr. Chairman: That is only Mr. McCallum's representation.

Mr. Renwick: Mr. Chairman, then I take it that Mr. Genest and Mr. McCallum's point of view, on behalf of Hydro, they are saying, there are two elements in the matter before us. One, the point which I have made, as to whether or not there should have been a negotiation on ~~the~~ ^{it} which raises many questions ~~and~~ ^{to} which you are going to address replies and argue. The second point is that you also question the conclusion, which Mr. Cartwright has drawn, that on the execution of the contract there is a profit of \$5⁴ million.

Mr. Genest: Very much so.

Mr. McCallum: Yes, sir, ^{those two things} ~~and we know~~ And we thought, not you, we thought, that he was directing ~~us~~.

Mr. Chairman: Speak a little louder if you are going to speak, Mr. McCallum.

Mr. McCallum: We thought he was directing his attention primarily to the latter aspect, sir, and that he had mentioned earlier in evidence, and might intend to come back to it, that he thought that ~~a~~ other bargaining should take place, but that he was conversing with Mr. Shibley with respect to just the latter aspect of it in particular, and it was by way of elucidation of his conclusion that the profit was \$5 million ~~some odd~~, that he proposed to demonstrate to you that invested and over a period of time there would come the \$17 million, ~~some odd~~. / ~~think that he was doing.~~

Mr. Renwick: I understand those two aspects of it, ~~It~~ It still comes through to me that our basic question is, should there have been some reduction in rent because of

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(Mr. Renwick)

some participation in this ~~profit~~ profit.

Mr. McCallum:

~~Mr. Newman:~~ It certainly may be —

Genest:

Mr. Chairman: Surely, Mr. Renwick, one of the issues before this committee is, how much is in it for Mr. Moog?

I mean that's one of the circumstances surrounding the transaction and I take it that that evidence is being addressed to that point, as well as what ~~you~~ should Hydro have —

Mr. Chairman: I ~~think~~ think it is relevant. *I'm ruling it —*

Mr. Renwick: I agree with that, yes.

Mr. Chairman: Mr Newman. I'm sorry, are you through Mr. Renwick? For the time being.

Mr. Renwick: At the risk of elaboration, but "what's in it for Mr. Moog?" is also related with "should Hydro have had it?"

Mr. Genest: (Inaudible) Yes —

Mr. Renwick: That's it, all right. I think we are talking on the same line.

Mr. W. Newman: Mr. Chairman, my question is very short and Mr. ~~McCallum~~ Cartwright can answer it in a hurry. The \$5.4 million, is that figure with or without capital gains, or can it be either way? At the point of execution of the agreement does it really matter, whether there is capital gains or not?

Mr. Anson-Cartwright: It is a question of claiming capital cost allowance.

Mr. Newman: Capital cost allowance, I should say.

Mr. Anson-Cartwright: This is based on the premise that capital cost allowance is claimable by the developer and it is the profit at the execution of the agreement, which is \$5.4 million, excluding builder's profit, and excluding the difference between the cost of construction and the appraised value.

Mr. Chairman: Mr. Allan.

Mr. Allan: Mr. Chairman, I'm going to admit my misunderstanding
of some of this and would ^{like} ~~back~~ to go back to grade one. I'm
interested, and I must say that I don't understand ~~where~~ where —

H 2509 to follow

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(Mr. Allan)

~~my mis understanding of some of this and would like to go back to grade~~

~~I'm interested and I must say that I don't understand,~~ Just to deal with the first line of this Appendix A, Situation ~~and~~ ^V, income before depreciation, \$875,000. Now, I would like to know where that \$875,000 came from.

Mr. Shibley: Where are you looking, Mr. Allan?

Mr. Genest: Appendix A.

Mr. Allan: Appendix A, Situation ~~and~~ ^V. That is, there's no profit, there's no builder's profit included in this, there's no maintenance profit and my understanding was that the payments to Prudential are only sufficient to pay for the principal and the interest over 30 years, so I am wondering where the \$875,000 came from. And then I would like to be sure ~~that~~ ^{at} how you are sure that the maximum capital cost allowance, the \$875,000, can be ~~be~~ claimed.

Mr. Chairman: You are trying to cut through too much too quickly, Mr. Allan. They are two good questions.

Mr. Genest: ²
~~A member~~: Those are vital questions.

Mr. Anson-Cartwright: I wonder~~ed~~ if we could --

Mr. Chairman: Do you want an adjournment?

Mr. Anson-Cartwright: I would like an adjournment so I can mock up those figures for Mr. Allan. *I think it is important.*

Mr. Chairman: Fine, recessed until 4.

The committee recessed briefly at 3.47 o'clock, p.m.

(H-2610 to follow)

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~~XXXXXXXXXXXXXXXXXXXX~~

The committee resumed at 4.00 oclock p.m.

Mr. Chairman: I am concerned about the time element. I don't want to have to work this evening for various reasons and I am sure that applies to all of us. This has been an important point and I think that the time has been well spent on it. I realize that we have Mr. Allan's questions to be answered. I have then Mr. Bullbrook and I gather Mr. Glen Hodgson, you are content to hold? Then I would ask that we proceed with the report, get it in as quickly as possible, and subsequently allow opportunity for ~~the~~ Canada Square and for Hydro to make their questions on it at the same time the committee members might hold theirs to the end. This has been the main contentious point and the one we need to get clear on. I think we will have a pretty clear picture when we complete Mr. Allan and Mr. Bullbrook's questioning.

Now, before I forget it, I think we are now in a position to ~~mak~~ mark this as an exhibit and I give it the number of ~~235x~~ 236.

Now have you been able to work out an answer, Mr. Anson-Cartwright, for Mr. Allan?

Mr. Shibley: Its # 237.

Mr. Anson-Cartwright: Yes, I have. Its a little bit complex because of a problem of blended payments of principal and interest on the mortgage but I think I can make it quite clear to Mr. Allan. Unfortunately, you can't see these figures but I will try and go over them slowly, Mr. Allan, and explain them to you.

First of all, revenue at \$4.84 per square foot on

H-2611-1

(Mr. Anson-Cartwright)

First of all revenue at \$4.84 per square foot on \$1,124,500 square feet, that gives \$5,422,580

Mr. Genest: Four, four, two.

Mr. Anson-Cartwright: Pardon me, \$5,442,580. The recessed area \$25,000. Total rent ~~area~~ excluding commercial rent \$5,467,580. Maintenance costs \$1.45 per square foot, times the same floor space of \$1,124,500 square feet, for a total maintenance cost of \$1,630,525. That gives a net rental income from that particular source of \$3,837,055. Now ~~another~~ in these assumptions I assumed that there would be commercial rent of \$10 per square foot.

Mr. Allan: Is that really \$14 you are talking about?

Mr. Anson-Cartwright: No, I said \$10 a square foot. Only ~~approximately~~ an amount of \$2 in excess of the \$6 that would accrue to Canada Square. That is \$835,000, less the applicable maintenance which is \$121,075 for revenue from commercial area of \$713,925. That gives a total of \$4,555,980. Then, you have to deduct the ground floor payment for the bank area of \$40,000. That is \$4,510,980 - that is the net rental income, commercial and other. The interest, and I have taken \$45 million, is \$3,600,000, and that gives a total profit of around \$900,000. This discrepancy of \$25,000 arises because in my computer programme I have made assumptions, which I just can't recall at the moment, but I think I made assumptions that the debt was paid at the end of the year and the rents flowed in on a monthly basis. So there is a slight discrepancy there for which I apologize. But basically, income before depreciation is in the order of \$875,900 to \$900,000. The debt retirement is \$380,000 for that particular year. You have got blended payments of principal and interest. \$380,000 taken away from \$875,000 gives you an annual cash flow, after the loan repayment, of \$495,000. I think that explains that calculation for you as best I can.

Mr. Shibley: I might say, Mr. Allan, I think Mr. Nastich has been over all these figures and there is no dispute as to the arithmetic. Is that not so, Mr. Nastich?

H-2611-2

Mr. Allan: I expected the arithmetic was right, but I wanted to know where this profit came from.

Mr. Shibley: But I think if we can get that much out of the way.

Mr. Genest: That's right, Mr. Nastich agrees with the arithmetic.

Mr. Shibley: Right.

Mr. Genest: The arithmetic, not --

Mr. Shibley: Okay.

Mr. Chairman: Are you satisfied on that Mr. Allan?


Mr. Allan: I now know where the profit comes from.

Mr. Chairman: Let me correct my ~~exhibit~~ exhibit number, it should be 237 not 236. One more apology to the committee.

Now, Mr. Bullbrook.

Mr. Bullbrook: I have no questions.

Mr. Chairman: You indicated you don't. And Mr. William Hodgson? All right, then we are back to you, Mr. Shibley.

Mr. Shibley: Well I think I am going to leave it to Mr. Anson-Cartwright to return to, I think, page 5 and following. It seems to me that much of what 

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(Mr. Shibley)

~~respect to this price level and following, it seems to me~~
that much of what is coming ahead of us has been anticipated in the line of questioning, but I think we should cover it anyway, if you agree, Mr. Anson-Cartwright. What point of reference do you want to go to?

Mr. Anson-Cartwright: I think I would like to, first of all, make one comment to clarify this \$7,500,000 figure.

Mr. Shibley: Right.

Mr. Bullbrook: ~~think~~ We are leaving the schedules ~~and~~ then ~~and~~ going back to ~~we~~

Mr. Anson-Cartwright: We are going going back to page five.

Mr. Bullbrook: Right. Okay. Thank you.

Mr. Anson-Cartwright: I would like to clarify that \$17,500,000 figure because I don't want it to be considered by this committee that I am just - I am quite sensitive - I don't want to convey the impression that I am just throwing out large numbers. I think the best comment came out from, I believe, Mr. Newman that to appreciate that ~~\$7.5~~ million ~~over~~ over the 30-year term one would have to consider again on the transaction at the point of time of the execution of the document of ~~\$5.4~~ million ~~and~~, and the investment of those proceeds over the 30-year term. If you can appreciate that, then that matter is settled.

Mr. Shibley: ~~Is that figure \$7.5 million or \$17.5 million~~

Mr. Anson-Cartwright: ~~\$17.5~~ million.

Mr. Shibley: You have been saying ~~\$7.5~~ million.

Mr. Anson-Cartwright: I am sorry, ~~\$7.5~~

\$17.5 million ~~\$7.5~~. I apologize.

Mr. Shibley: So if you take the present value of the contract, the day that Hydro signed that contract, that contract was worth \$5 million?

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Mr. Anson-Cartwright: That's right.

Mr. Shibley: And if you took that ~~in~~^{and} reinvested it over 30 years, it would be ~~be~~^{worth} \$17,500,000?


Mr. Anson-Cartwright: That's right.

MR. Shibley: That's how you arrived at that figure?

Mr. Anson-Cartwright: That's right.

Mr. Shibley: Presuming capital cost allowance? All right.

Mr. Anson-Cartwright: Page six. I think we have pretty well covered that. The second heading is present value of the after-tax profits and that's the ~~same~~^{1.54} million ~~same~~.

Now I think we should, in fairness to all the parties concerned, get into the alternatives, and one of the keys is the amount~~x~~ of commercial rent. ~~Now~~ I have assumed, one of the assumptions is on the basis that the commercial area can be leased for only \$6 per square foot. Now, let's look at appendix "A", situation 3 ~~and~~ I am saying if the commercial area can be rented for only \$6 per square foot, throughout the term of the contract, not initially but throughout the term of the contract, then the total after-tax profits to Canada Square on a present value basis is \$3,100,000. You will see the present value column on appendix "A", schedule 3 ~~3062~~²⁸⁸, ~~that~~ⁱⁿ that column, you will see that there is an annual cash flow of \$289,000 ~~on~~^{on} a present value basis \$277,000 in the first year. Mr. Nastich prepared a schedule showing the revenue on the assumption that the commercial area could be leased at \$6 per square foot and that provided a cash flow of 

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(Mr. Anson-Cartwright)

~~could be leased at \$6.00 per square foot and that provided the~~
~~costs at~~ 22 cents per square foot, for almost the same
figure that I have. Therefore, comparing my Appendix "A",
Situation ³~~three~~, it is in agreement with Mr. Nastich's calculation
of revenues; \$6.00 for the ground floor, and \$6.00 for the mezzanine.
From that there would be a profit of \$3.1 million. As I say,
I don't think it is reasonable to assume that the developer would
enter into a contract on the assumption that he would have no profit
whatsoever from the commercial area, and I don't think that that
assumption is a valid one, but I have shown, just coincidentally,
it was in my report, the same sort of figures.

Mr. Shibley: Again, on that Situation ³~~three~~, Appendix "A",
you give the after-tax profit over the term at \$4,300,000:
on a re-invested basis it would be just under \$10 million based
on those assumptions.

Mr. Anson-Cartwright: Pardon me, on a re-invested basis
it would be \$9.0 million.

Mr. Shibley: Just under \$10 million.

Mr. Anson-Cartwright: Just under \$10 million.

Now, on page 7, as Mr. McCallum quite correctly pointed
out, I did have one more input and that was showing profit of 10 cent
per square foot on the maintenance. I am not saying in any way
that that would be so, I think that is a judgment for the committee
to make, but if there were 10 cents per square foot maintenance,
then the present value basis would be increased from \$5.4 million
to \$6.7 million.

Mr. Shibley: Just before you go on from there, I want
to be clear on that. The earlier calculations did not include any
profit for maintenance. This is predicated on a profit built into
the ~~at~~ \$1.49, but if escalation of costs eat up that then there is no
such profit built into this.

Mr. Anson-Cartwright: That's right.

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Mr. Shibley: So that the \$21,800,000 figure in here has to be measured against the fact that escalation, as indicated by Mr. Zwig's testimony, makes it unlikely that there is going to be any profit in that \$1.45. Is that not so?

Mr. Anson-Cartwright: I think that is so, but ~~and~~ again, I would say I am assessing this contract from the time of execution.

Mr. Allan: It is regularly renegotiated, though.

Mr. Genest: No, no.

Mr. Allan: The maintenance?

Mr. Genest: No, it is escalation.

Mr. Allan: Well, the escalation, yes.

Mr. Genest: No, but that is

Mr. Shibley: I think the witness' point is a valid one ~~and~~ also. You are approaching this on the basis of the posture of the parties at the time they entered the agreement so that is why....

Mr. Anson-Cartwright: Mr. Shibley^{cy}, if you are saying the maintenance costs increase, I think that you ~~and~~ also have to look at the possibility of the commercial rental space ~~is~~ increasing.

Mr. Shibley: Yes. Well, ~~there~~ is another aspect of it also and that is that in the evidence, when they submitted their proposal and as of the time Hydro approved of the contract, the deal between Mr. Candy and Mr. Moog was that there was to be no builder's profit and no ~~profit~~ profit on the maintenance ~~and~~ I think I am right as to that. Isn't that so?

Mr. Anson-Cartwright: Yes.

Mr. Shibley: So that....

Mr. Anson-Cartwright: It is a ~~question~~ question of what profit is; one might say that profit is ~~fee~~ for service.

Mr. Shibley: All right.

Mr. Anson-Cartwright: Now, if I could move on. Item 6 on page 7 is intended to prove out my figures and to show these complex schedules in another manner quite succinctly. The rental income before recoveries and set-offs is \$4.92 per square foot.

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B.G.

(Mr. Anson-Cartwright)

~~Before recession and adjustment, the \$3.25 per sq. ft.~~ The amortization of the permanent financing, which has been agreed upon, is $\$3.24$ per sq. ft., assuming an interest rate of 8 per cent on \$45 million. So that the net-left rental income less cost of permanent financing, debt and interest, is \$1.68. If we assume the maintenance costs are \$1.45, the profit is .23¢ per square foot. Then I've gone further and I've said, let's put into this a possible profit in maintenance of .10¢, so that the estimated profit per square foot would be .33¢, and Mr. Nastich's calculations have shown figures of zero, .22¢, .42¢, .47¢, depending upon commercial rents.

Now, that then, would indicate a profit over the term, and here's how we prove out the sort of \$17 million, you see, or that type of figure, thirty-three cents per square foot for a 1,200,000 square feet for thirty years, gives you a flow of \$11,900,000.

Mr. Genest: Is that with reinvestments?

Mr. Anson-Cartwright: Pardon me?

Mr. Genest: Is that with reinvestment of the cash flow?

Mr. Anson-Cartwright: This is an overall calculation. The \$3.25 combines debt and interest, so that you can't really make that type of comparison, Mr. Genest.

Mr. Genest: All right.

Mr. Anson-Cartwright: The \$11,900,000, together with the value of a terminal loss of \$3 million, which I'll explain later, comes up to \$15 million, and I'm comparing that with Schedule 1, Situation 7. I'm sorry to show you all of these schedules but it is important to my narrative. That schedule shows commercial rent of \$6.00, and it also shows a maintenance profit, because the maintenance per square foot is \$1.35. And that shows an after-tax profit of \$14,400,000. That's just sort of a check on my figures.

H-2614-2

September 14, 1973
4:20 - 4:25 p.m.
B.G.

(Mr. Anson-Cartwright)

We have dealt with pages 8, 9, and 10, so, as a matter of fact, we are right up to -

Mr. Shibley: 13.

Mr. Anson-Cartwright: 13.

Mr. Shibley: Right.

Mr. Anson-Cartwright: I could go through the narrative on cash-flow benefits to a developer, ^A as I say, they have been recognized by officials of Ontario Hydro, talking about tax deferral, and surely that means the same thing as cash-flow benefits, because what you are in effect doing is borrowing money from the federal government, that is your otherwise ~~have~~ income tax liability, at no interest, and that's how these benefits arise.

Now, as I say, I've explained cashflow in my analysis of the first line of Schedule 1 for Mr. Allan. I don't think I need to go into ~~that~~ that any more, other than to point out by reference to ~~Appendix A~~ Appendix A, Situation 1, that during the first 15 years, assuming capital cost allowances can be claimed, there is no income tax liability of the developer.

~~Now, on page 14, I have explained some sophistication in~~

(Tape H-2615 follows)

(Mr. Anson-Cartwright)

~~Mr. Anson-Cartwright~~ Now, on page 14, I have explained some sophistication in these calculations and we could over those by reference to situation one. I have said that maximum capital cost allowances would eliminate taxable income, and I have gone on to say that, in addition, you could claim very substantial depreciation in later years, to build up what is known as a loss carry-forward so that the period of deferral of income taxes could be extended from 10 or 11 or 12 to 15 years. Then you will see on situation one that the ~~developer~~ ^{developer} suffers later on, ^{though} For that benefit, he suffers later on by having an adverse cash flow. He has to pay income taxes, expenses and debt repayments in excess of his rental income.

Now, at the conclusion of the lease agreement, it is provided that Canada Square will sell the head office building to Hydro for the sum of one dollar. At that particular point in time, I wouldn't have any idea of what the fair market value of the head office ~~building~~ building on University Avenue might be, ^{or} but to know what the ~~is~~ that is, the appraised value or fair market value. But, for income tax purposes, there is still is a residual value of that building. Depreciation on a diminishing balance basis at five per cent does not completely exhaust the cost of the building in the 30th year.

And, therefore, there would be a terminal loss, what is known as a terminal loss, on the disposition of the building by Canada Square to Ontario Hydro and that loss could be applied by the developer against other income. Now, there is a question as to the timing of the application of that loss and you will note that the - on appendix A, situation one, that the after-tax value of the loss is \$2.7 million. That is the third column from the right, the second figure up, ^{\$2.697} ~~\$2.7~~ million.

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AA

2615 - 2

(Mr. Anson-Cartwright)

Now, because the loss is not applied immediately, you will see that the present value of that benefit is almost — it's less than a third. It is only \$831, ⁰⁰⁰~~000,000~~ And that is what has gone into the input of this calculation of \$5.4 million. In other words, if you can effect a tax saving 30 years hence of a thousand dollars, it's not worth a thousand ~~dollars~~ dollars now, it is worth something very substantially less. ~~The~~ Money at eight per cent doubles in seven years, I believe, six or seven — may nine years — 7-1/2 — nine years.

Mr. Nastich: Nine.

Mr. Anson-Cartwright: Thank you. Nine years.

So that's the explanation of that particular schedule.

Page 15 is my explanation of why I have had regard to the investment of the cash flow, which I know to be a valid concept. I think one of the other ~~new~~ developers had a computer programme, which I saw after I had made my calculations and which took the same concept of reinvestment of cash flow.

~~Mr. Genest: Mr. Chairman, does this complete the witness's presentation on the capital~~

2616 - 1 follows

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Mr. Genest: Mr. Chairman, does this complete the ~~vising~~ witness's presentation on the capital cost allowance issue?

Mr. Shibley: No, no, there's still - we haven't got to it. It's the next page.

Mr. Genest: Oh, yes, sorry. It ~~shows~~ ^{shows} you how much I understand it.

Mr. Anson-Cartwright: That makes me feel good.

Mr. Bullbrook: May I ask you a question, if Mr. McCallum could help me. If you recall, sir, in giving your evidence, you had mentioned the second proposition, the proposition having been put to you that there should be an "and" added to the agreement and if you will recall it was going to automatically revert at the end of the 30 years and there was an "and" added and the provision requested by Canada Square --

Mr. Genest: For a dollar.

Mr. Bullbrook: That it be reconveyed for a dollar. ^{at} I take it that ~~that~~ time you were fully aware of the terminal loss significance and --

Mr. McCallum: I was aware of my impression of the terminal loss situation, yes. My impression doesn't agree with Mr. Anson-Cartwright's.

Mr. Bullbrook: Oh, well, I want to have the benefit of your impression whenever the appropriate time is.

Mr. Chairman: Let Mr. Anson-Cartwright finish if he would.

Mr. Bullbrook: Your MO, I take it now is that we don't compartmentalize it. We are going to finish with Mr. Anson-Cartwright totally, is that it?

Mr. Chairman: That is my ^{hope} ~~hope~~ to get it all in. I am anxious that we should get it all in ~~and then and then~~ - we will exhaust ourselves on time otherwise.

Mr. Anson-Cartwright: If you'll turn to page 16, I will try and move as quickly as possible. As a result of tax reform, losses created by claiming depreciation, generally speaking, will not be deductible from non-rental income. The intent of those new

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(Mr. Anson-Cartwright)

provisions was to preclude professionals such as doctors, lawyers, ^{and} ~~and~~ include the accountants ^{from} sheltering income and obtaining the benefit of cash flow, in other words earning \$80,000 a year buying a building which would throw off depreciation of \$80,000, paying no income taxes, having the benefit of the cash flow which one might reinvest at interest. ^{A Member: A rip-off. Mr. Anson-Cartwright: Yes} However, I think that's the term, rip-off, professional rip-off.

Mr. McCallum: The one Mr. Deans remembers.

Mr. Anson-Cartwright: That special restriction, however, doesn't apply to interest as we have in this particular case, property taxes or other carrying or operating expenses, nor does it apply where the corporation is in the business and has a principal business of holding of real estate or is in the development of real estate and I have mentioned on the page, the particular provisions of their regulations, so a developer such as Y and R, Horizon, Canada Square, etc., would be able to claim capital cost allowances and in addition would be able to claim, as I have exhibited in my schedule in the 10th to 13th years, would be able to claim a loss through depreciation on rental properties.

On the other hand, a general contractor or somebody whose principal business is not the holding of real estate such as, for example, Ellis-Don, unless they set up such a corporation for that specific purpose, ^{but} ~~a~~ ^(firm) contract or a construction type, would not be able to claim a loss on depreciable capital property which would be applied against other than business income, or other types of income.

So that, I indicate on the bottom of page 16, a real estate developer appears to have a slight advantage over a general contractor although I think a general contractor could ~~set up~~ set up a corporation whose principal business was in the area of development.

Page 17; the top paragraph, I have already explained. In addition, the second paragraph, I have indicated that capital cost allowances ~~could be claimed and losses realized from capital --~~

H-2617-1

(Mr. Anson-Cartwright)

~~In the second paragraph I have indicated that capital cost allowances~~
could be claimed and losses arising from capital cost allowances could
be claimed, so that in my example the years of tax shelter are
extended to the 15th, 16th and 17th, or the 15th years. I just
forget how far we go. Up to the 15th year, ~~was~~ half-way through the
contract.

The third paragraph on page 17 explains the terminal loss.
Now, for those of you who are knowledgeable in the area of capital
cost allowances and the concept of depreciation for tax purposes, the
question might arise, since capital cost allowances ^{is} on a pool basis,
how can a terminal loss arise with respect to a particular building?
Well, under tax reform there is a provision that buildings costing
in excess of \$50,000 would fall into a separate class. And if
Canada Square sold a building with a residual tax value of \$5,300,000
which is about the residual tax value in the 30th year, for \$1,
it would have a terminal loss of \$5,300,000 less \$1.

So that in the computer programme we took into ~~the~~ account
the application of that terminal loss which arose on sale, and part
of the loss was applied against rental income in the year of sale,
and under the loss carry-over provisions of the Act, the loss could
have been carried back one year. There is still a terminal loss
left over which would have to be applied against other income of the
developer.

I think that is an explanation of everything up to page 18.
There are only two more pages to go.

Mr. Shibley: Just before you leave that, ~~and~~ the material
provided from the developers who did provide their computer runoffs
or other calculations, did it indicate that they were making their
calculations based upon an allowance to them of capital cost
allowance?

Mr. Anson-Cartwright: Yes. In all cases where I saw the
material they assumed that capital cost allowances could have been
claimed.

MR. Shibley: Yes.

H-2617-2

Mr. Bullbrook: Did they also assume ^{the} "terminal loss" position?

Mr. Anson-Cartwright: One of them did.

Mr. Genest: They go together.

Mr. Bullbrook: They go together? Oh, I'm sorry, I didn't realize that.

Mr. Anson-Cartwright: It's a function of it. Yes, they did.

Mr. Bullbrook: Well, would they go together, just for the matter of my knowledge, would they go together if ~~the automatic reconveyance clause~~ the automatic reconveyance clause had continued in the agreement, or is it necessary to have a provision for resale for a stated amount?

Mr. Genest: Well, that is the nub of the argument. I think that just will delay us until..

Mr. Bullbrook: All right, I'm sorry, I won't get into it. I just wanted some education.

Mr. Shibley: Do you want to carry on then on...

Mr. Anson-Cartwright: Do you want me to go right to the very end?

Mr. Chairman: Yes, if you would.

Mr. Anson-Cartwright: Fine. On page 19, I'm dealing with the preference or the comparison of the lease-purchase transaction with direct financing by Ontario Hydro.

Mr. Genest: Mr. Chairman, I know you don't want interruptions, and I apologize for this one. Again, I think here, I know the committee will want to ~~hear~~ this anyway. But there are opinions here, that in my respectful submission, are outside the field of ~~competence~~ ^{competence} with all due respect to Mr. Anson-Cartwright. I have ^{read} to really the last two paragraphs on page 20. I don't know what the committee wants to do with these. He's passing judgement on whether Ontario Hydro should have been able, from an economic viewpoint, to tender out maintenance, for instance, on which I seriously question Mr. Anson-Cartwright's qualifications to give expert opinion evidence.

~~Mr. Chairman - Mr. Genest, let it go to you and make your objections to them. I am not. I'm inclined at this.~~

H-2618-1 follows

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4.40 - 4.45 pm

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AA

(Mr. Genest)

~~qualifications to give expert opinion evidence~~

Mr. Chairman: Mr. Genest, let it go in ~~and~~ now and make your objections to them. ~~I am not~~ I am inclined at this point to agree with you but I think it would be a mistake not to let this evidence go in and leave it to the wisdom of the committee to deal with it in the appropriate way.

Mr. Shibley: Mr. Chairman, I want to make it clear that the points on page 20, in terms of this witness's expertise, should not be taken in derogation of his complete expertise in respect of the matters set forth on page 19, ~~which~~ which, in my mind, is more salient to the question that this committee has to decide upon, bearing in mind the wealth of evidence or the depth of evidence that this type ^{of} transaction was entered into so as not to affect the ordinary borrowing sources or borrowing capacity and credit of Ontario Hydro. ~~and~~ I don't want Mr. Genest's comment, vis-à-vis the last two ~~paragraphs~~ paragraphs on page 20 to be taken as in any way impugning this witness's expertise to comment upon what is on page 19.

Mr. Genest: Well, with respect, Mr. Shibley, I don't think you qualified this witness to give opinions on analysis of the credit of the province. He is an expert accountant, a very distinguished accountant, but that is a money market matter, and I think he should be qualified to express opinions on the views of the money market as to matters that affect the credit of borrowers.

Mr. Chairman: I ask you to let him proceed on it. It's in evidence ~~Now~~.

~~Mr.~~ Genest: I'm making trouble for you Mr. Chairman.

Mr. Shibley: I would like some comment on that from the witness.

(Mr. Renwick:

Mr. Renwick: Those are legitimate comments by Mr. Genest and I think we will take them into account. I don't think Mr. Genest is going so far as to say that we shouldn't receive them.

Mr. Genest: Well, I will just give that caveat. That's right. That's right, Mr. Renwick.

Mr. Renwick: Yes. *We're going to have*

Mr. Anson-Cartwright: I think I can give my testimony in this area quite succinctly, quite quickly.

As I understand it, there were two overriding considerations for the selection of the lease-purchase route, as against the direct financing. The first, as I understand it, was that the debt would not be shown as a debt of Ontario Hydro and would not affect Ontario Hydro's borrowing position.

The second was, and this appears in the papers that I have read prepared by Ontario Hydro, that the developers could claim capital cost allowances, and therefore, there was merit in taking the lease-purchase route, because you might have effected a better deal by the ~~sharing~~ ^{sharing} of those benefits.

My testimony will be, not ^{that} of one experienced in money market matters, but I would like to comment upon the thought that you can obviate the portrayal of liabilities through the lease-purchase transaction. There is substantial debate in accounting circles on this issue and they are not ones about whether the manner of presentation - pardon me, not ones about whether the lease commitments should be portrayed, but rather how they should be shown and I understand that there is a debate

(Mr. Anson-Cartwright)

I understand that there is the debate presently ~~with~~ in Ontario Hydro as to whether a lease commitment of this type should be portrayed as a debt, as an actual liability on the financial statements, or whether it should be shown by way of note.

Mr. Shibley: When you say a "debate", debate with whom?

Mr. Anson-Cartwright: Well, I understand from Mr. Nastich, there is - at least, I think I understood from his comments made to me on Wednesday - that there was discussion or debate with Ontario Hydro's auditors on this particular matter.

Mr. Genest: Within Hydro.

Mr. Shibley: No. No. He is saying -- Mr. Nastich, who is the debate with?

Mr. Nastich: Within my own financial group. We are looking into which is the best way to handle it, in view of the -- as Mr. ~~Anson~~ Cartwright says -- in view of the discussion now going on in the United States where they have some of this, as to which is the best form of treatment. It's a matter of study and the answer is not yet come through. If ~~you~~ we are working on it, you have two accountants just as you have two lawyers . . .

Mr. Shibley: It is ~~not~~ ^{matter of} a debate with your auditors? ^{, however}

Mr. Nastich: We are not debating ^{it} with them yet, It is going to have to be discussed with our auditors in 1975.

Mr. Shibley: Yes.

Mr. Nastich: That is why it is not settled yet, Mr. Shibley, The decision doesn't have to be made until 1975.

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Mr. Anson-Cartwright: ^{that} The reason I am commenting on this particular area is to give the committee my views that it is not entirely clear that the objective of removing ~~of~~ the debt from ^{the} the portrayal of the liability from the financial statements of Ontario Hydro will be achieved. I further go on in my comments to indicate that it's quite clear to me that any major lender to any corporation, including Ontario Hydro, would take into account, in assessing credit risk, etc., very substantial lease commitments. If you have a lender and a borrower and one borrower has no lease commitments and another has ~~a~~ lease commitments of \$162 million over 30 years, surely that position of the second borrower is going to be taken into consideration by the lender.

Mr. Bullbrook: ^{That} ~~is~~ always ~~at~~ mystified me, Mr. Anson-Cartwright, I must say.

Mr. Anson-Cartwright: ^{I mean,} ~~This~~ is very clear to me and I can't ~~...~~

Mr. Bullbrook: It mystified me how they wouldn't take it into consideration!

Mr. Renwick: I am glad the accounting profession has got so far as to at least debating ^{the matter of} whether it should be shown on the financial statement

Mr. Anson-Cartwright: Mr. Renwick, it is not a debate as to whether it should be shown, its a debate as to how it should be shown.

Mr. Renwick: I understand that.

Mr. Anson-Cartwright: I would say it must be shown either by way of note or by way of liability and then there is no way you could disguise it from a potential lender.

Mr. Bullbrook: But that's the point. Your basic evidence is no matter how it is shown, as a debt or as a notation, a prudent lender would take ^{it} ~~into~~ into consideration in evaluating the credit position of the borrower.

Mr. Anson-Cartwright: That's ^{right} ~~rightly~~ position.

Mr. Bullbrook: Is this your opinion?

Mr. Anson-Cartwright: Yes.

Mr. Deans: Is it normally shown?

Mr. Anson-Cartwright: Yes.

Mr. Deans: It is normally shown? Well, that's a
the question. I mean —

Mr. Anson-Cartwright: Lease commitments are shown,
either by way of note or by way of liability.

Mr. Deans: I want to be clear. Lease commitments
are shown presently in that way?

Mr. Anson-Cartwright: Either way. ~~A~~ The uniformity
of the presentation is not established.

Mr. Deans: It is not possible for ~~it~~ ^{to} to not show
them?

Mr. Anson-Cartwright: On the concept of full dis-
closure, they should be shown according to generally accepted
accounting principles.

Mr. Allan: Mr. Chairman — Mr. Genest: Could I just — Mr. Bennett:
Mr. Chairman: Just a minute, I have got three

people wanting in at once, and the chairman had a question
as well. Let Mr. Genest put his question first.

Mr. Genest: ^{I just want to clear that up.} ~~Mr. Chairman~~ Surely there is more
to it than that? It depends on the significance of the
obligation. ~~If Hydro lent I might ask Mr. Anson-Cartwright~~
~~this - if~~

H-2620 follows

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4:50-4:55pm

C.B.

(Mr. Genest)

~~...made on the difference of the allocation.~~ Might I ask Mr. Anson-Cartwright this. If Hydro rents two floors or three floors in a building for 10 years, in his opinion, is that ~~must~~ must that be ~~shown~~ shown on the financial statement? Either by way of note or as liability?

Mr. Anson-Cartwright: The materiality does enter into the consideration. More and ~~more~~ even those liabilities are being disclosed by way of note, but materiality is another factor, Mr. Genest.

Mr. Chairman: Mr. Allan and then Mr. Renwick.

Mr. Allan: Mr. Chairman, if I ~~re~~ recollect Mr. Nastich's testimony yesterday, their concern, their greatest concern was the availability of money.

Mr. Genest: That's right.

Mr. Allan: Rather than any effect it would have on the credit. I understood Mr. Nastich to say that \$45 million in their overall borrowing was a very - a comparatively small amount.

Mr. Genest: I wanted that brought out, because Mr. Nastich's ~~statement~~ ^{testimony} ~~was~~ ^{it} ~~was~~ ^{is} how much Hydro paper is out. Institutions say 'I'll invest \$15 million of my portfolio in Hydro bonds' and it doesn't depend on their balance sheet, it depends ~~on~~ ^{is} there ~~is~~ ^{is} just too much ~~stuff~~ ^{stuff} around, and you get to a point where you have difficulty selling it. I think that was Mr. Nastich's ~~intention~~ ^{point}. I think that's a matter of experience in money markets.

Mr. Allan: That was my recollection.

Mr. Genest: And really not of balance sheets in my respectful submission.

Mr. Chairman: I think Mr. Nastich has made that point.

But Mr. Allan has Mr. Anson-Cartwright answered your question?

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C.B.

Mr. Allan: I didn't have a question.

Mr. Chairman: Well, then you had no right speaking. Mr. Renwick.

Mr. Renwick: I just wanted to throw my nickel's worth or a caveat because in fact Hydro borrows on the ~~the~~ credit of the province, as I ~~was~~ understand it. Either the province borrows and lends to Hydro or the Hydro borrows with the guarantee of the province, I think that also affects the question of the market assessment of their ability to get funds on the capital market substantially, and maybe diminishes the importance of this point from the overall question of the credit of the Province of Ontario.

Cartwright:

Mr. Anson-Cartwright: But if a justification of the lease-purchase route was to avoid affecting the credit capacity of the province, my comment is that that would not succeed, because the commitments would have to be disclosed, particularly for example, if Ontario Hydro became a Crown corporation and the commitments were guaranteed by the province.

Mr. Renwick: Well, I understand that, I ^{just} think other considerations come in when you are talking about the credit capacity of the government of the Province of Ontario.

Mr. Anson-Cartwright: Right.

Mr. Renwick: It may well, of course, have significance if in fact the intention of the change in the structure of Hydro is to ultimately require it to go to the market on its own, and not have the benefit of the province borrowing or the benefit of the provincial guarantee.

Mr. Nastich: Do you want an answer to that?

Mr. Renwick: Yes.

Mr. Nastich: The Task Force Hydro number four report looked at this question of the provincial guarantee and after long consideration concluded that the provincial guarantee should continue.

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C.B.

Mr. Renwick: Should continue?

Mr. Nastich: Should continue on Hydro bonds.

Mr. Renwick: Thank you, Mr. Nastich.

Mr. Chairman: Mr. Anson-Cartwright, are you suggesting, or am I taking a wrong interpretation, that the whole exercise was in vain in the sense that as far as the financial market is concerned Hydro itself might have gone to an insurance company and borrowed the money, and its credit, apart from the matter of bonds or paper being outstanding, would be in the same position?

Mr. Anson-Cartwright: That's right. That's my position.

I'm saying in effect that the lease-purchase route Mr. Deane: Was not a way out.

Mr. Renwick: But you can't ignore the debt.

Mr. Anson-Cartwright: You can't ignore the debt.

Mr. Genest: If that's as far as he's going, I'll buy that. But if he is saying that we could have gone to an insurance company or a private placement without giving a mortgage, I quarrel with that violently.

Mr. Anson-Cartwright: No, I'm not.

Mr. Genest: And bear in mind we can't give a mortgage because of our German bond issue restrictions.

Mr. Anson-Cartwright: I'm aware of that and I'm also aware that you can't mortgage,

~~Mr. Chairman: I'm glad you put that German bond issue. That may be the reason we've gone through the exercises.~~

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~~Mr. Chairman: I am also aware that you can't mortgage~~

Mr. Chairman: I am glad you put that German bond issue ⁱⁿ. That may be the reason we have gone through the exercise.

Mr. Renwick, did you have any other questions?

Mr. Renwick: No, I don't have any other questions.

Mr. Bullbrook: Getting into the Fleck logic.

Mr. Chairman: ^{I've} simplified it, I know.

Mr. Anson-Cartwright: ~~I indicated it is~~ ^{This} probably

~~accommodates~~ ~~comment~~ Mr. Nastich's remark that there may be other reasons for selecting the lease-purchase financing route. He talked, as Mr. Allan pointed out, about availability of funds. In the material that I saw prepared by Ontario Hydro, that was not used as a justification for the particular ~~adopting~~ this route, and that's the reason I make that comment.

Mr. Chairman, I would like to take the points on page 20 as read. Mr. Genest comments on my qualifications as an expert witness in this area and I would have to admit that I am not an expert witness in the money market field. I do make these comments as subjective comments of my own personal opinions, that in a lease-back transaction secured by lease commitments you can borrow money at an interest rate, surely the lessee could have borrowed money at that rate as well, and I make other comments that I thought were self-evident. They are not intended to make a judgement of any kind.

Mr. Renwick: Mr. Chairman, I think we might just throw away on that item number four on page 20, it would not be self-evident to local 1000 of the Canadian Union of Public Employees.

Mr. Chairman: I have got it marked down as expert personal opinion only. I think we are getting to the point where I will have to start indexing our ^Ecavats but --

Mr. Genest: Just on that last page, there are just a couple of points. I don't think they are too worth dwelling on but I just did want to clear up a couple of points, as to whether or not Mr. Anson-Cartwright has taken any account of the delay costs being incurred by Ontario Hydro in preparing details, specifications and putting out the matter to tender, whether he has considered that.

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(Mr. Genest)

It doesn't appear here, to me anyway.

Mr. Anson-Cartwright: I did mention, Mr. Genest, that the proposal route ^{as} opposed to the tender route was time consuming. And I do think that the proposal route with a variance, working along with a developer, was ~~carried out~~ ^{carried out} sincerely for reasons of expedience.

Mr. Genest: The other point I want to ^{make,} ~~make~~ on ~~paragraph~~ ³ paragraph ³ 0, Mr. Anson-Cartwright, you suggest there that Ontario Hydro could have got the whole profits of the commercial rents. You are not assuming that Hydro is possessed ~~with~~ of the expertise to administer ~~a~~ and run a commercial area? ~~for~~

Mr. Deans: Don't open that up.

Mr. Genest: No, that's one of the reasons for picking the developer.

Mr. Anson-Cartwright: I think I would have ^{to} agree that they didn't have that expertise.

Mr. Genest: And lastly, as far as contracting — apart from ~~the~~ ^e ~~the~~ ^{of} the caveat ^{of} Mr. Deans and Mr. Renwick on contracting out maintenance — I take it that it is not suggested that we could have got from a maintenance contractor the same rate that a developer would offer in a package.

Mr. Anson-Cartwright: I don't think that I would agree with that. I think that --

Mr. Genest: Well, if you don't, what do you know about maintenance costs and contract costs of contract maintenance operators?

Mr. Anson-Cartwright: I'm saying that merely because we have a package deal doesn't mean that you couldn't sort out the components, and then assessing the cost for a particular function such as maintenance ^{were} ~~was~~ I believe, I think it would be reasonable to ask that Ontario Hydro could have gone out ~~and~~

(H-2622 to follow)

H-2622-1

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5:00 - 5:05 p.m.
B.G.

(Mr. Anson-Cartwright)

~~I think it would be reasonable to assume that Ontario Hydro could have come to the market and had the maintenance work done for the same cost.~~

Mr. Genest: What do you understand by maintenance work?

Mr. Anson-Cartwright: What do I understand by ~~maintenance~~ maintenance? ~~well, I don't understand the question.~~

Mr. Genest: Yes, ^{do you} ~~I~~ mean the janitors, or do you ^{mean} ~~the~~ the engineers and the care of the equipment and the administration of the building?

Mr. Anson-Cartwright: Well, if you look in Y and R's analysis of maintenance ~~costs~~ ~~you~~ costs, ~~you~~ you will see categories. ~~I~~ I think there are 46 different categories, included in maintenance costs, and that's what I understand to be maintenance ~~you~~ of a very substantial centre or building such as this.

Mr. Genest: Are you suggesting that ~~that~~ that kind of total service is available on the market?

Mr. Chairman: These questions are coming from me.

Mr. Genest: Yes, I'm asking these questions.

Mr. Shibley: But actually, in fairness to the witness, there ~~was~~ memoranda within Hydro itself that one alternative was to fund the building and build it themselves, and contract out the maintenance.

Mr. Genest: I know, but it was rejected, Mr. Shibley.

Mr. Shibley: No, but I mean, you are putting the questions as though this was a new thought or concept beyond the range of possibility. In fact, Hydro itself considered that.

Mr. Genest: No, no, I'm not doing it for that purpose, Mr. Shibley. ~~I understand.~~ I'm attacking the conclusion of Mr. Anson-Cartwright ~~but~~ but I'm doing it with respect, I hope.

Mr. Shibley: Yes, you are.

Mr. McCallum: And restraint.

Mr. Genest: That it's not that simple, ~~the~~ the maintenance of a building. It's tantamount, I suggest,

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(Mr. Genest)

to going out and hiring Canada Square ^{Gr} and Y and R and saying "he'll pay you a fee and you manage our building. And what I question is whether they would have offered the same rate.

Mr. Deans: May I just correct -

Mr. Genest: Can I have an answer?

Mr. Chairman: Mr. Genest, I think we would like an answer.

Mr. Deans: On ~~o~~ that point, am I not correct that one of the proposals did in fact make mention of the fact that the, — was it not Ellis-Don who said that they were going to hire someone to go on and do the maintenance ^{ance} work and they proposed a rate of something less than \$1.45.

Mr. Shibley: \$1.23.

Mr. Deans: \$1.23, thank you; so that it's not as unreasonable as perhaps Mr. Genest might have us believe.

Mr. Chairman: Now, do you want your question answered, Mr. Genest?

Mr. Genest: No, I guess we're just -

Mr. Anson-Cartwright: I'd be pleased to answer the question. I think there are companies in the business of providing maintenance service for large buildings.

Mr. McCallum: And ^mmanagement.

Mr. Anson-Cartwright: And management, yes.

Mr. Genest: ^{A member: At today's wage rates.} Have we reached the end? I wonder if it would be convenient now to go into the ~~the~~ capital cost allowance which I consider very important.

Mr. Chairman: Well now, I just wanted to ask Mr. Shibley, does that -

Mr. Shibley: No, I'm through.

Mr. Chairman: That's the presentation as far as you are concerned. Now, I know there will be a lot of questions. I think it might be reasonable to hear from Mr. Genest first, before we get into the questions from the members because I am sure he will cover a lot of ground. ^{And} ~~do~~ you intend to make a presentation

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(Mr. Chairman)

on this, Mr. Finlayson? Are you -

Mr. Finlayson: I don't know that it will be necessary; I think Mr. Genest will probably be covering all the points that I have so I don't ~~really even~~ really contemplate saying anything.

Mr. Chairman: If he doesn't, we will hear from you next.

Mr. Bullbrook: The only thing, Mr. Chairman, I want to record is I don't want to compartmentalize this. I want to be able to, if I don't understand something during the course ~~of~~ we have been subdued now at your request, but if Mr. Genest brings up something that I don't understand, I don't want to wait until he ends it. ~~I want to be able to~~

Mr. Chairman: No, I think that's -

Mr. Bullbrook: I want to be able to ask.

Mr. Chairman: I think that's reasonable.

Mr. Bullbrook: Okay.

Mr. Chairman: Your ~~question~~ questions then presumably would be towards Mr. Genest.

Mr. Genest: Well, I wonder if the witness might be asked then, Mr. Chairman, if he is familiar with interpretation bulletin No. IT-1 dated July 5, 1971, issued by the Department of National Revenue, and dealing with capital cost allowance.

Mr. Chairman: Does that number ring a bell with you?

Mr. Anson-Cartwright: Very familiar with the bulletin.

Mr. Genest: Well then, may I ask the witness to identify it and have it made an exhibit. I have sufficient copies here for Mr. Shibley: Just by coincidence. Mr. Genest: the members. ~~By~~ coincidence I just happen to have brought them along.

Mr. Chairman: You brought your own music, Mr. Genest.

Mr. Genest: I ~~Shibley~~ had to get back somehow.

Mr. Shibley: ~~Remember~~ Remember, the last exhibit is yours.

Mr. Genest: Yes, that's right.

Mr. Chairman: I have lost track of my numbers, again.

I think it's 238, is that right?

Mr. Shibley: That's right.

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Mr. Chairman: You can identify that as an official document from the Government of Canada?

Mr. Anson-Cartwright: It doesn't have the usual red heading, but, yes, ~~it~~ that is interpretation bulletin ~~IT-17~~ IT-17.

Mr. ~~Genest~~ Chairman: That's ~~your~~ your whole case, is it, Mr. Genest?

Mr. Genest: Mr. Chairman, no, I think it's an important document and ~~I would like to take the time of the committee to read it if anybody has their copy.~~

~~Mr. Chairman: Are you going to read it in French or~~

~~Mr. Genest: Well, I can do it in both.~~

(Tape H-2623 follows)

H-2623-1

(Mr. Genest)

I'd like to take the time of the committee to read it, if everybody has ^{his} copy.

Mr. Chairman: Are you going to read it in French or English?

Mr. Genest: I can do it in both if you want.

Mr. Walker: Simultaneously?

Mr. Genest: But I'll start in English. It says;

"It is necessary to determine with regard to leasing agreements, whether payments made in respect of those agreements are in substance payments of rent or payments on account of the purchase price of property or, in the case of sale-leaseback agreements, repayments of a loan. As there is no special provision in the Income Tax Act dealing with such agreements, this determination must be made on the basis of general law and the provisions of the agreement itself.

"Individual cases will be treated in accordance with the general statements of Departmental policy that follow:

"Lease-Option Agreements vary considerably in their terms. At one extreme is the agreement that provides for rental payments at a reasonable rate during the currency of the agreement and gives the lessee an option to purchase the property at the end of the rental period, and sometimes also at some earlier time or times, at a price that reasonably approximates what is likely to be its depreciated value at the time or times when the option is exercisable. (In this connection 'depreciated value' refers to the cost of the property less a reasonable allowance for wear and tear, and not to its undepreciated capital cost as computed under the Act.)"

Mr. Bullbrook: I want to stop there. You see, Mr. Anson-Cartwright, I thought that you, in explaining it to us, I took it that ~~that~~ ^{terminal} in calculating the ~~terminal~~ loss position you were taking the depreciated value, and not the cost of the property less a reasonable allowance for wear and tear.

Should I be interrupting now?

H-2623-2

Mr. Genest: Yes, I think it will come clear.

Mr. Bullbrook: Okay, go ahead.

Mr. Genest: What they are saying here is the rule for determining whether you can claim it at all, the terminal loss is ~~calculated, it is~~ calculated from the undepreciated capital cost.

Mr. Bullbrook: Then go ahead.

Mr. Renwick: Mr. Genest, I ~~was~~ only asked this as to whether it is significant or not, if it isn't pass it over. This isn't a lease option agreement that we are dealing with.

Mr. Genest: No, I think the whole statement is ~~applicable~~.

Mr. Renwick: Is applicable, regardless of the ~~format~~.

Mr. Genest: Is applicable, that's right, regardless of the terminology used. That's right.

Mr. Renwick: Because it was a crucial part of this deal that Hydro get the building back, it wasn't the optional.

Mr. Genest: That's right. The point is whether ~~it is~~ the payments made by Hydro are going to be treated as rent, or whether they are going to be treated as payments on account of the purchase price of the building 30 years from now.

Mr. Renwick: So you are not hanging anything on the question of whether it is a sale lease-back or lease-purchase.

Mr. Genest: Right.

Mr. Renwick: Or whatever the designation is. Thank you.

Mr. Genest: "Where an agreement is of this nature, the annual payments will be dealt with as rent, and a subsequent exercise of the option to purchase will not change their character to that of payments on account of the sale price of the property, even if the agreement provides that some part of them will be so applied should the option be exercised.

"At the other extreme is the case where property is rented on terms that call for the title to pass to the lessee at no additional cost when all the rentals required under the agreement have been paid."

Now that, I say, is this transaction.

"In circumstances such as this, the agreement is in substance an agreement for sale, and the same would apply where the payment to be made at a time when an option to purchase can be

H-2623-3

(Mr. Genest)

exercised is so low in relation to what will be the estimated depreciated value of the property at that time that any reasonable person obviously would exercise the option. When an agreement is, in substance, an agreement for sale, the payments ordinarily will be dealt with as payments on account of capital which are not deductible, as rent or otherwise, in computing income; and the purchaser's capital cost ordinarily will be equal to the sum of the amounts he is required to pay to the vendor.

"When a payment is considered to be on account of the purchase price, the purchaser may take the view that such a payment is a blended payment, being partly a capital payment and partly a payment of either rent or interest. While it cannot be admitted, in these circumstances, that part of the payment is rent, the view that part is interest, and deductible in computing the purchaser's income by reason of Section 11(1)(d), may have merit, provided that a similar amount can be included in income of the vendor pursuant to Section 7(1). In these circumstances it is possible to impute interest only where it can be shown conclusively that the aggregate of all payments to be made under the contract is greater than the fair market value of the property. The amount of total interest so imputed will be the lesser of (1), the excess of such payments over fair market value or (2), the amount of interest of the term of the agreement calculated by applying to

H-2624-1 follows

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(Mr. Genest)

of (1), ~~the excess of such payments over fair market value~~
~~on the~~ the amount of interest over the term of the agreement
calculated by applying to the fair market value of the property
a suitable interest rate prevailing at the time of the execution
of the agreement. If the purchaser's ~~own~~ contention is
accepted, there will be excluded, of course, from the
capital cost of the property to him any amounts allowed or
to be allowed as deductions ~~for~~ for interest in computing his
income."

"Between the extremes there will be many examples
of varying kinds. The Department's principal interest is to
see that significant sums paid for the purchase of property
are not being charged against income as rent, of which no
recapture can be made from a lessee who exercises his option
and then sells the property at a price which reimburses him
for all or part of the 'rent'.

"Some of the factors that will be considered when
determining whether the substance of a transaction is a
lease or sale are listed ~~below~~ below." And these are very
important. ~~So~~ "If the answer to one or more of the factors
in items 1 to 6 is in the affirmative, a sale may be indicated.

"(1) Is the option to purchase exercisable within
a period which is materially less than the useful
life of the property with the rental payments
in that period amounting to a substantial portion
of the fair market value of the ~~property~~ property
at date of inception of the lease, or, in the
same circumstances, has the lessee a right
to renew the lease for the remaining approximate
useful life of the property at a rental substantially
less than fair market rental, which makes the
renewal of the lease almost a certainty?

(Mr. Genest)

- "(2) Does the lessee have the right, during or at the expiration of the lease, to acquire the property at a price which at the inception of the lease was substantially less than the probable fair market value of the property at the time or times of permitted acquisition ~~by~~ by the lessee?"
- "(3) Was the property acquired by the lessor to meet the special needs of the lessee and will it probably be usable for that purpose by the lessee only?"
- "(4) Does the term of the lease correspond substantially to the estimated useful life of the property, with the lessee obligated to pay costs such as taxes, insurance and maintenance, which are usually considered incidental to ownership?"
- "(5) Has the lessee guaranteed the obligations of the lessor with respect to the property leased?"
- "(6) Is some portion of the periodic rental payment specifically designated as interest or readily recognizable as the equivalent of interest?"

"In relation to the above factors, the registration of the transaction as a Conditional Sales Contract is not"

I guess they are talking about equipment leases here. " is not necessarily a decisive factor, nor is it necessarily decisive when the agreement makes no provision for the transfer of title, or specifically precludes the transfer of title."

Then they talk of sale leaseback agreements. I don't know -- I don't think there is anything there. Am I right, Mr. Anson-Cartwright that

Mr. Finlayson: Read the last paragraph on the last page.

Mr. Genest: On the last page? Yes. That is very important. "The Effect on Lessor."

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(Mr. Genest)

"It is the Department's policy to apply the same interpretation of an individual contract or agreement to both the lessor and ~~the~~ lessee who are parties to it."

Now, may I ask this question, Mr. Chairman? Is this, to your knowledge, still the official view of the department?

Mr. Renwick: Mr. Chairman, would Mr. Genest read into the record the immediately preceding paragraph as well.

Mr. Genest: "Again there will be many cases falling between the two extremes. The Department's principal interest in these cases is to see that repayments of borrowed money of a significant amount are not being charged against income as rent."

Mr. Walker: Those are the extremes.

Mr. Genest: ~~Those are~~ But that's on sale lease-back agreements, Mr. _____.

Mr. Renwick: I want to get that point clear then, because if, on page one, in the second paragraph, immediately after the heading, "Lease-Option Agreements", you have the expression, "At one extreme is the agreement that provides ~~that~~ _____." At the beginning of the next paragraph, you have got, "At the other other extreme is the case where property is rented. ~~mm~~" Do I take it that the reference is the paragraph on the second page, "Between the extremes there will be many examples of varying kinds," ?

Mr. Genest: Yes. That's the significant one.

Mr. Renwick: That's the ^{appropriate} conclusion is it?

Mr. Genest: That's right.

Mr. Renwick: Thank you.

Mr. /Anson/ Cartwright: ~~Mr. Anson-~~ Mr. Anson- Cartwright, is that still the official policy of the Department of National Revenue in the treatment of transactions of this type?

Mr. Anson-Cartwright: I think that's their

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AA

(Mr. Anson-Cartwright)

interpretation of the tax consequences of lease options and ~~sales~~ *sales or*
~~leasebacks~~ leasebacks, yes.

Mr. Genest: And am I right in suggesting that
there are only two decisions of the Tax Review Board
dealing with the matter?

Mr. Anson-Cartwright: Well, if you would quote
the decisions, ~~xxx~~

~~Mr. Genest: Chitougamau Timber Ltd.~~

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~~(Mr. Anson-Cartwright)~~

~~I think I should quote the decisions. I know of~~

Chibougamau...

Mr. Genest: Chibougamau Lumber Ltd. vs. the
Ministry of National Revenue.

Mr. Anson-Cartwright: I am aware of that case, and
there are a number of other cases, I don't have them at hand.

Mr. Genest: There is Lagueux et Frères — that's
"and brothers."

Mr. Shibley: *What a* ~~show-off~~ show-off.

Mr. Anson-Cartwright: At the risk of ~~being~~ being number two,
~~there is~~ there is Genest et Fils.

Mr. Genest: The Chibougamau one is July 3, 1973, ^{where} the
Tax Review Board, as it is now called, held that certain equipment
apparently ^{the capital cost allowance} ~~was not available because~~ the transaction was
in effect, a purchase, is that correct?

Mr. Anson-Cartwright: That's right.

Mr. Genest: Now, in view of that, Mr. Anson-Cartwright....

Mr. Bullbrook: ^EMr. Genest, are you not going to put the
question to him as to whether he distinguishes that case from the
instant circumstance?

Mr. Genest: No, I just wanted to establish, Mr. Bullbrook —
and ^{do} ~~do~~ you want these cases? I don't think they are very ~~helpful~~
helpful.

Mr. Bullbrook: No, no. I guess we are going to get to the
confrontation.

Mr. Genest: I am just coming to it now. In view of the
official policy of the Department of National Revenue, how do
you justify the certainty with which you apply capital cost
allowance to your analysis of the profits available in this
transaction?

Mr. Anson-Cartwright: Well, I think it is quite clear in
the bulletin that you have to assess each particular lease option,

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(Mr. Anson-Cartwright)

or sale and lease-back transaction, on its own particular merits. I recognize that there are these so-called six tests, but first of all, this ~~the~~ bulletin is ~~not~~ not law in any way. It is merely an interpretation of the law. The cases are merely at the Tax Review Board level and have been appealed. In this particular situation, we have one non-taxable entity, and another a taxable corporation, and you will recall that the ~~department~~ ^{both parties to the contract} said it was going to treat ~~each taxpayer~~ in the same manner. In addition, the principle ^{of} reason behind this interpretation bulletin was to preclude a lessor from selling property without incurring recapture of depreciation. That is the main intent of the bulletin, to prevent somebody from ~~depreciating~~ ^{something} from, let's use our example, \$45 million down to \$5 million, and then selling it for \$5 million, and thereby avoiding a recapture of depreciation. But in this particular case, there is no possibility for a recapture, and so that particular part which was the basic philosophy of the bulletin of tax avoidance, is not contained in this particular -- that aspect of avoidance is not contained in this particular transaction.

Mr. Genest: Stopping you there, Mr. Anson-Cartwright...

Mr. Chairman: Well, just let him complete.

Mr. Genest: Oh, I'm sorry.

Mr. Anson-Cartwright: I'm fine.

Mr. Genest: I ~~wanted~~ ^{ed} ask him a very ~~of~~ wide question.

Mr. Chairman: You have completed it?

(tape H-2626 follows)

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(Mr. Genest)

Oh, I'm sorry.

Mr. Anson-Cartwright: No, that's fine.

~~XXXXXXXX~~ Mr. Genest: I asked him a very wide question.

Mr. Chairman: You have completed it, Mr. Anson-Cartwright?

Mr. Anson-Cartwright: Well, if you like, I can

Mr. Genest: Perhaps if I let him go on after, just on that point I wanted to put ^{to} the witness, that tax avoidance can also be achieved by dressing up a sale as a lease and empowering the seller to claim capital cost allowance. Is that not so?

Mr. Anson-Cartwright: Well, it's a question of whether tax deferment is tax avoidance I suppose.

Mr. Genest: Well, it is more than tax deferment, is it not, Mr. Anson-Cartwright?

Mr. Anson-Cartwright: No. The only opportunities here of the developer are deferments.

Mr. Shibley: And I want to take that up.

Mr. Genest: Well, yes ...

Mr. Shibley: Let's give the witness the benefit of this review, that in the submission of Canada Square on the initial premise, there was to be no profit on construction, no overhead for allowance, the cost of money would be as much as \$3.35, the cost of maintenance, \$1.45, for a total of \$4.80, for a balance of 12 cents allowed to cover their overhead and prefit. Now I would like it put, is Canada Square intending to claim capital cost allowance on this transaction? If the position is ~~is~~ going to be that they are not going to claim for it, then let's hear it. If they are going to claim it, let's hear it. Because it strikes me ^{that} on the basis of the figures that Hydro were working on, and bearing in mind that each of the other developers who made submissions predicated their -- included in their material the fact that they were

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(Mr. Shibley)

going to claim capital cost allowance, what's in it for Canada Square unless this was their intent? I just don't understand.

Mr. Genest: Well, you know, with respect, I think the real question is regardless of what they claim, what is the likelihood of their getting it?

Mr. Deans: If they're not going to claim it, we don't have to concern ourselves with it.

Mr. Chairman: I see you took the microphone from Mr. Finlayson; he took it away from you voluntarily.

Mr. Finlayson: Mr. Chairman, so there is no suggestion that this is an academic point, there is no question that we are going to attempt to claim capital cost allowance. On the other hand, we recognize that this is by no means a simple problem and we can say we have claimed it on other buildings and we haven't got it so far, so there is a great deal of merit in the points that Mr. Genest is raising. I am trying to stay out of this argument and I told Mr. Bradshaw to take full notes of everything Mr. Anson-Cartwright is saying, because these are the kind of arguments we are going to be trying on the department, there's no question about it.

Mr. Shibley: ^{You can} ~~He'll~~ send ^{them} ~~you~~ a bill!

Mr. Finlayson: ^{It depends how he} ~~He generally~~ does! But there is no question about it, this is a very serious problem and I think, with great respect, it is very, very misleading for the witness to put one side of the case forward here as if ~~though~~ that is the only side. There is no question that we are going to get capital cost allowance. I would have thought, with respect, that it would have been fairer ~~to put~~ to put two propositions to you: one, what is the present value of this cash flow, assuming a capital cost allowance, which ~~is~~ the witness has done, and the second, what is the present value of the cash flow, assuming no capital cost allowance? Then, you gentlemen, having read the bulletin and heard Mr. Anson-

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(Mr. Finlayson)

Cartwright, and the like, ~~we~~ can make up your minds, as a practical matter, just how likely are we to get this and, as a practical matter, how sound really was Mr. McCallum's opinion which he gave to Hydro at the time that "there is no way that they are going to get this." Now that doesn't mean we are not going to try to get it, but we will know later, maybe three or four years from now, whether Mr. McCallum was right or not. But certainly there is nothing simply about this thing and ~~the~~ Mr. McCallum's opinion was a considered ^{one} given at the time, the fact that this witness has a different opinion doesn't change the fact that it is a very serious issue. As I say, what I think you gentlemen are going to have to decide is -- really, the question is, was Hydro reasonable in accepting Mr. McCallum's advice that we would not get a capital cost allowance? Now, Mr. Shibley, is ~~that~~ quite right, we are going to ask for it but whether we are going to get it or not, is going to be something Mr. Bradshaw can worry about.

Mr. Chairman: Well, Mr. Finlayson, I appreciate your point and I think you have put it well. Earlier in this hearing, very early, we took the stand that we didn't want to interfere with a person's position vis-à-vis the income tax department and I think you have put it ~~all~~

Mr. Genest: I think ^{nothing} ~~anything~~ I say binds Mr. ~~Finlayson~~ Finlayson.

Mr. Chairman: ~~No, that's right. Mr. Finlayson has put his point. He answered the question that they intend to claim for it and but it is a matter of law whether or not it will be~~

H-2627 follows

(Mr. Genest)

~~Mr. Renwick~~

Mr. Chairman: No, well, that's why Mr. Finlayson has put his point. He answered the question that they intend to claim for it, but it is a matter of law as to whether or not it will be sustained. I don't know whether there is anything ~~more~~ ^{more} here, Mr. Annon-Cartwright. Mr. Renwick has a point, but I think that's basically the position ~~and~~ ^{that} it is really up in the air. Now, Mr. Renwick.

Mr. Renwick: I'm just thinking from the point of view of the committee and its deliberations. I certainly don't think that we have either the competence or the desire to base any of our conclusion on that kind of a question nor do I necessarily think that we want to base any conclusions that we have on some assumption as to whether or not it will or it won't. It perhaps seems to me that we have got to look at the question that's of concern to us from ~~a~~ ^a somewhat different point of view, given the circumstances that - well, death and taxes are certain, in this particular case, it's uncertain ~~and~~.

Mr. Genest: No, that's not the point, Mr. Renwick.

Mr. Renwick: But I would like to put it this way to Mr. Genest, and I say this with the usual caveat ^{at} not to draw any conclusion from it, I want to know why Mr. Genest feels that Hydro must take the brunt of the explanation of this question. What is the concern of Hydro as to whether or not Canada Square does or does not get capital cost allowances?

Mr. Genest: The concern of Hydro in these proceedings on one aspect of the matters in issue before the ~~committee~~ committee, is to show first of all that they made a good deal for themselves and, secondly, that they didn't give away too much money to Mr. Moog. It is as simple as that and this is a very relevant consideration on that issue.

Mr. Renwick: All right. Now, Mr. Chairman, could I ^{of} ~~to~~

Mr. Genest: And the third point, ~~that~~ ^{of} Mr. McCallum, which is valid is that we shouldn't be faulted for failing to ask for something that we thought on very good ground we couldn't get.

Mr. Shibley: Just let me intervene just for the moment,

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(Mr. Shibley)

Mr. Renwick. *Again it is the --*

Mr. Renwick: I don't want you to, but I'll let you.

Mr. Shibley: Again, it's the -- I am sorry, go ahead.

Mr. Chairman: If you don't want him to, *you better go on.*

Mr. Genest: I don't want to get into arguments *on the*
question of this.

Mr. Renwick: No, I don't want to get into an

argument either. I think it was extremely interesting and significant that Mr. McCallum did two things in his statement. I didn't realize the significance of them at the time when he started to give his evidence, and during the course of his evidence he did two things. One of them was that he carefully indicated to the committee that he was not brought into the transaction for the purpose of remaking a deal. He was there to negotiate the agreements on the basis of a particular arrangement entered into between Canada Square - I am probably stating this badly - but he wasn't in there to renegotiate but to get the best deal within that framework that he could for Hydro and secondly, he also referred during the course of his remarks and made the point from his experience, using the Star building as an example, that in the private sector it is often the way in which it is done, that you select the developer that you are going to deal with and Mr. Anson-Cartwright made the identical point.

Now this may be again ^{for} the basis of trying to get the point that's of concern to me over ~~us~~ a much gross over-simplification and over-stated but I would like Hydro to give it consideration when they are considering their submissions next week that this damn problem of opting for the tender system or opting for the developer system method of proceeding seems to me to have led to Hydro in a sense falling between two stools. The tender system, you put it out and you get the tenders in and you make your selection from amongst all those who have tendered.

Mr. Genest: And you don't negotiate down ~~the~~ ^{to} those figures.

~~Mr. Renwick: That's right. That's the end of the game~~
~~then. You make your deal. The contract is made --~~

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C.B.

~~Mr. Renwick:~~
~~(Heard)~~

~~and you are not to have the whole thing.~~

Mr. Renwick: That's right, that's the end of the game then, you make your deal, the contract is made. You come to the developer system and we get to this question not only of the qualitative comparison and evaluation of proposals which come in, but you again seem to me once you've invited proposals and you come in and the developer puts his proposition forward and you select from amongst a group then, it seems to me that in one sense you can't go behind the sort of assumptions on which that particular developer has come in, and as Mr. McCallum said, he wasn't brought in to renegotiate the deal.

Now, on the other hand.

Mr. Genest: Mr. Zwig said they had given it their best shot, taking into account their own individual tax positions, when they made their presentations.

Mr. Renwick: Yes, as I say I'm oversimplifying it and overstating it. On the other hand it seems to me that what Mr. McCallum was saying and what Mr. Anson-Cartwright was saying about a private corporation, a private body selecting a developer and going to them, then it seems to me that this negotiation operation with respect to sharing benefits might very well be - not might very well be, but would be a normal part of the transaction to do it.

I say that for two reasons, is that there is a real hazard in a private operation when that kind of a deal is made to share tax benefits, you immediately verge into the artificiality conception of the arrangement and that creates problems. I think it is perfectly clear from this record of our evidence that there hasn't been anything artificial about the way in which the agreement has evolved in terms of the various agreements. I don't think there is that problem, and I'd like Hydro to give some consideration in their submission to this damned problem which is created by having gone in between on this system and invited

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(Mr. Renwick)

orders in ~~and~~ creates not only this damned problem that we've touched on, of how you evaluate them, but whether or not you in fact preclude yourself by the very nature of that operation once you've selected your developer from engaging in this kind of bargain with them with respect to tax advantages. Now I may have overstated it or over simplified it, but it is the kind of a box that I see in there.

Mr. Genest: No I can see you point, it is a very substantial point. But I wonder if I might not better deal with it Mr. Renwick in the submissions to be made rather than

Mr. Renwick: Mr. Chairman, that is the only reason I raised it was so that in your submission you could somehow or other help us with that box. But I don't think, I certainly as a member of this committee am not going to spend my time in the next several days deciding whether or not there is capital cost ~~allowance~~ allowance going to be allowed in this matter, and that is a very difficult tax question which some court somewhere is going to decide and I'll be damned if it is our job to do it.

Mr. Genest: That is the point. The only point ~~the~~ ^{the argument} ~~is~~, first of all, Mr. Anson-Cartwright it is a matter of legal interpretation of the Act, Mr. Anson-Cartwright, well a tax expert, I suppose, is not a lawyer, although the accountants are pre-empting us in the field.

Mr. Chairman: Yes, they certainly are.

Mr. Genest: And Mr. Anson-Cartwright isn't ~~going~~ going to decide it and no one else but a court is going to decide it.

Mr. Renwick: Nor are we.

Mr. Genest²: Yes, but what I wish to show is that there is - I want to tie it in, Mr. Chairman, to the policy of the department, because I think that ^{it} I show that Canada Square by claiming this are running head on into a departmental policy, I've created a very substantial doubt as to whether they are going to get it.

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C.B.

(Mr. Genest)

I want to test this, not on what the ultimate decision is going to be. But I'm going to ask the committee to look at the departmental bulletin. I'm going to ask Mr Anson-Cartwright to do this and fit this deal into their policy, because what I'll be submitting to you is that this deal clearly, very clearly does not meet the tests that are laid out by the department for the allowance of capital cost allowance. ~~NOW~~ if I can put that whole proposition ^wrapped up in a package to Mr. Anson-Cartwright and ask him if he agrees with it, that is an end to this part of the subject.

Mr. Chairman: Mr. Anson-Cartwright has been anxiously waiting and Mr. Newman has a question. But I think in view of the fact you've just put a question, let Mr. Anson-Cartwright deal with it now.

~~Mr. Anson-Cartwright: Thank you. Please.~~

H 2629 to follow

Sept. 14/73
5:35 - 5:40 pm
CA

H-2629-1 .

(Mr. Chairman)

~~Mr. Anson-Cartwright: I have a question, but I think in view of the fact you have~~
~~just got a question let Mr. Anson-Cartwright deal with it now.~~

Mr. Anson-Cartwright: Thank you. First of all I would like to speak to Mr. Finlayson.

He mentioned that he thought that I should have shown both sides a situation where no capital cost allowance was claimed or claimable, and where capital cost allowances were claimable. In my original draft ~~and~~

Mr. Chairman: I wonder if they'll just be quiet because Mr. Anson-Cartwright has a difficult problem here, so the talk behind him is disturbing.

Mr. Genest: I'm sorry, Mr. Chairman.

Mr. Anson-Cartwright: In my original draft, Mr. Finlayson, I had included a copy - this is before, I guess; I think you saw my original draft, Mr. Shibley - with the inclusion of this interpretation bulletin, and commentary speaking to it, and ~~and~~ calculations with or without capital cost allowance. I am just mentioning this because I took the position that I would be prejudicing your particular client if I were to make the commentary that he was not in the position to claim capital cost allowance. My own view is that this particular transaction does not fit this interpretation bulletin; this is merely an interpretation bulletin. There are distinguishing factors; for example, it is quite clear that this applies to taxable entities, and we have one non-taxpaying entity, and another taxpayer. And I just want to let you know that I was bending over backwards to attempt to be fair.

Mr. Finlayson: Well, I hope you haven't taken anything that I said on this thing as any suggestion that you weren't trying to be entirely fair with us all, Mr. Anson-Cartwright.

Mr. Anson-Cartwright: No, I haven't, George, but I just wanted to let you know that I went through the exercise that you suggested, ~~and~~ I didn't want to have a series of documents for presentation to the public at large dealing with all of these issues in minutia, which might be read by officials of the Department of National Revenue, and they might have all of my

H-2629-2

(Mr. Anson-Cartwright)

arguments, pro and con. I was respecting your client's position. I just wanted to make that clear.

Mr. Finlayson: Well, if you do have the figures, perhaps you could produce them?

Mr. Anson-Cartwright: I don't have them with me, but I would like to...

Mr. Renwick: Could we have them?

Mr. Anson-Cartwright: I would like to make...

Mr. Shibley: You did have the bulleting, but I don't remember seeing the figures.

Mr. Anson-Cartwright: Oh yes, I'd gone through calculations—

Mr. Shibley: Well, I didn't see them as part of the material, I must say.

Mr. Anson-Cartwright: I didn't have detailed polished schedules, but I had been through that calculation. And I would like to make some comments on that particular aspect. Even if capital cost allowances cannot be claimed, then the department must regard this transaction not as a lease but instead as a sale for tax ~~purposes~~ purposes, or a financing transaction, if you want to call it. In that event, I'm not so sure that the developer ends up in such a horrible position in any event. For example, I think the position where no capital cost allowances may be claimed is roughly as follows. I think the developer would be able to write off immediately costs such as development costs, financing costs, architect's fees and so forth, because the department would be saying, "You don't own this building. It is a sale".

Mr. Genest: Mr. Anson-Cartwright, would that be write-off against other income?

Mr. Anson-Cartwright: Yes, I guess.

Mr. Genest: You are assuming then that Canada Square has other income against which to write off these amounts.

Mr. Anson-Cartwright: It has, of course, the rental income.

H-2630-1 follows

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Mr. Anson-Cartwright: It has, of course, the rental income.

Mr. Genest: No, I mean the rental income from this building.

Mr. Anson-Cartwright: Yes.

Mr. Genest: But not -- you are assuming there is income from other sources?

Mr. Anson-Cartwright: No. No, I am talking about this transaction being regarded by the department as a sale in lieu of a ownership of property in claiming capital cost allowance, and I suggest to you that that is not a damaging position to the developer. I think that you can't just say, "Okay, you don't own the building and, therefore, there is no capital cost allowance." I think you have to then be saying, as it says in this bulletin, you have got a financing ~~xx~~ transaction or a sale, And then the costs of construction, etc., all attendant costs, are deductible expenses because they are either ordinary expenses or they are part of the cost of sale.

Mr. Bullbrook: Would the interest be considered a cost?

Mr. Anson-Cartwright: The interest would certainly be considered a cost. It would be specifically claimable in that event under section 21(c) of the Act.

Mr. Genest: ^{But,} Mr. Anson-Cartwright, would you not lose the tax deferral benefits?

Mr. Anson-Cartwright: No, as a matter of fact, you would be claiming a number of costs in the early years. In addition, there is an ~~obverse~~ ^{verse} obverse to commentary made here -- the department refers to Section 11(1)(d) ^{How} that is the deduction side of the ~~test~~ ^{thing}. They are saying that rather than have -- and that section is now in the twenties, 21(2) I think it is -- they are saying that rather than having a deduction for capital cost allowances, you can treat part of the rental payments as being on account of capital and part interest,

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XXXXXX

(Mr. Anson-Cartwright)

blended payments of principal and interest, and you can deduct the interest ^{element} ~~cost~~.

Mr. Genest: Well, do I understand ---

Mr. Anson-Cartwright: ^{Then they} ~~Let me~~ say, from the income side, you take in the income in accordance with section 7 (1), you have ~~a~~ blended payments of principal and interest, and you take in income. In my view, the department would, if they denied capital cost allowances, would have to take the position that is a sale as indicated in the bulletin, and then they would say the sale price, which is not \$45 million any more, it's \$162 million, the rental payments, and that \$162 million is either blended payments of principal and interest, or its income over a period of years, in which event ~~also~~.

Mr. Genest: What about maintenance?

Mr. Anson-Cartwright: Please! In which event, you would be able to take in that income on a matching principal ^{with} ~~or~~ costs of construction over a period of time on a reserve principal. Now, unfortunately, I don't even know where my calculations are for your particular purposes, but I looked at the risk in this area. I also took into consideration the number of memos by Ontario Hydro and the promises of the developer; themselves that they would be able to claim ~~xxx~~ capital cost allowances, I came to the conclusion that ~~xxxx~~ they wouldn't be in that bad a position if the capital cost allowances were denied.

Mr. Genest: ~~But~~ But, Mr. Anson-Cartwright, obviously, I put it to you, the position of the developer being able to claim capital cost allowance is more favourable than in the position of being not ~~xxx~~ able to claim that capital cost allowance? Isn't that why they wanted -- isn't that why you were so concerned about preserving Mr. Finlayson's position?

H-2631 follows

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5.45-5.50p.m.
B.A.

H-2631-1

~~Mr. Anson-Cartwright:~~
~~Mr. Anson-Cartwright:~~
Mr. Anson-Cartwright: I would think that the claiming of capital cost ~~an~~ allowances is more favourable than the other method I talked about as treating it as a sale. But I took that into consideration with the other input, that I don't think this particular transaction, as the bulletin indicates, falls squarely within the bulletin, ~~and~~ I recognize that they say you have to look at each particular lease document. Now, there are six criteria, they say some of the factors, but they have six points.

Mr. Genest: And they say if the ~~answer~~ answer to one or more is in the affirmative, ~~...~~

Mr. Anson-Cartwright: But, that's going to be their position but can they make it stick? This is only an interpretation bulletin. How can they say in law, and I recognize I am not a lawyer, but how can they say that there is no ownership of ~~de~~ depreciable property? I think there are a number of -- for tax purposes. Let's go through the various points, if you --

Mr. Genest: That's a ~~debatable~~ ^{legal} argument. The point I merely wish to make, and it won't be settled by the debate between Mr. Anson-Cartwright and me, or by the committee, ~~...~~

Mr. Anson-Cartwright: Discussion.

Mr. Genest: I merely want to make the point that this is running head on into a law suit.

Mr. Shibley: Another one.

Mr. Genest: Another one, ⁱⁿ which I am not involved.

Mr. Shibley: The department will retain you.

Mr. Anson-Cartwright: With respect, all of ~~the~~ ^{the} are exposed to assessment ~~s~~ by the Department of National Revenue. This is part of doing business, and there is the other side of it, you can make the department see your particular viewpoint just as well as they can scrutinize a transaction.

Mr. Genest: Mr. Anson-Cartwright, ~~...~~

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B.A.

Mr. Chairman: Just a moment, I want to let Mr. Anson-Cartwright say what he has to say on the matter. He has been interrupted so many times and I am not so sure he is through yet.

Mr. Genest: I misinterpret his pauses as the end.

Mr. Chairman: And Mr. Newman, in fairness to him, had his name on my list before you, Mr. ~~Renwick~~.

Mr. ~~R~~enwick: Would Mr. Newman defer~~re~~ to me simply because I have to catch a train in a very short time and I want to ask this question. I think Mr. Anson-Cartwright's ~~is~~ explanation is helpful to the committee, that it isn't a total loss if the decision is against the capital cost allowance, but I want to ask Mr. Anson-Cartwright, again coming back to this question of whether or not the question should have been an area of negotiation between Hydro and Canada Square, ~~—~~

Mr. Anson-Cartwright: Well ~~yes~~

Mr. Renwick: Just a second because I want the record, at least for my own purposes, to ~~say~~ ^{show} exactly what I am talking about. On page 2 of your submission, it is stated in succinct form, "In my view, in the discussions and ~~negotiations~~ negotiations with developers, officials of Ontario Hydro should have requested the developers submitting proposals, to provide an analysis of the tax advantages accruing to them with a view to sharing in such benefits through income tax deferment in the form of reduced rental payments under the proposed lease agreement." And that of course, is the conclusion to the preceding sentence, which states: "basically through the claiming of capital cost allowances". Now, do you think in a situation in which Hydro was placed that there would be any, assuming for the moment that they came to the conclusion, as Mr. McCallum had indicated, that there would be no capital cost allowance to Canada Square, assuming that that position ~~was~~ was taken, I take the substance of your remarks on page ~~2~~ ² ~~to say~~ ^{to} that that, then, isn't an area which you negotiate the other side of the coin with the developer? If the developer is not going to have capital cost allowances I take it that the negotiation just doesn't proceed.

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Mr. Anson-Cartwright: That's ~~that's~~ that's

Mr. Renwick: That that is entirely how it comes out for Canada Square, and Hydro, if they were satisfied that there was going to be no capital cost allowance, or took advice of Mr. McCallum that there was to be no capital cost allowance, then ^{it} ~~there~~ would not be an area for negotiation. There would be no criticism of Hydro

(Tape H-2632 ~~it~~ follows)

(Mr. Renwick)

~~There wouldn't be an area for negotiation. There would be no need. There would be no criticism of Hydro for not negotiating.~~

That's what I wanted to say.

Mr. Anson-Cartwright: Well, I think that's correct in part. I think if in the negotiation process Hydro recognized that a developer thought he was having benefits through tax deferral and they had had memos on this point, that they might well have gone to the developer and said, even if there is an area of doubt, they would go and say, "Look, if you have benefits through capital cost allowance, or through tax ~~deferral~~ ^{deferral}, we want to share in those, and if you don't have any benefits, there are provisions under the income tax administration information bulletin 70-6 to obtain an advance ruling on an issue such as this, and let's obtain a ruling and find out whether you have got it or haven't got it and then we'll proceed."

Mr. Renwick: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Newman.

Mr. W. Newman: Mr. Chairman, mine is a very simple question. You have been talking the pros and cons. ~~could you~~ You said you did some figuring on it without the capital cost allowance and we are talking about \$5.4 million at the point of execution of the agreement, could you give me ballpark figure of what that would be, that figure would be without capital cost allowance?

Mr. Anson-Cartwright: I think it would be -- I can't remember the figure --

Mr. W. Newman: Would ~~it~~ it be half that or three-quarters of it or --

Mr. Anson-Cartwright: I really can't remember the figure and I would prefer --

Mr. W. Newman: It would be considerably less than this, though, would it?

Mr. Anson-Cartwright: You see what I did was I took an alternative route with treating it as a sale and then I had to make a lot of assumptions as to which expenses would be claimed when. In fairness, it was less, but I can't recall the magnitude of the decrease.

Mr. Chairman: Would ^{it} be a figure that you could give us

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DT

(Mr. Chairman)

on Monday morning by way of a memorandum?

Mr. Anson-Cartwright: Yes, I think it would be.

Mr. Chairman: I don't want to get any more evidence held over until Monday if I can keep from that.

Mr. Genest: I would like to avoid ^{it} That puts me in ^a difficulty. I may challenge the figure, I don't know.

Mr. Chairman: Well, it's less anyway. I think we are taking the attitude --

Mr. Genest: What I wanted to put, was my information says substantially less. For instance, Mr. Anson-Cartwright, I take it that if capital cost allowance is not available, the terminal loss which is shown at a fairly substantial figure in your calculations - I am looking at Appendix A, ^Situation ~~one~~ - we have a terminal loss value of \$2,697,000. I appreciate that happens at the end of ^a ~~the~~ term but the present value of that is \$831,000 and that's not available. Am I correct?

Mr. Anson-Cartwright: No, you are not correct on that score. The cost of the building is \$45 million under these assumptions of \$44.4 million. The terminal loss is merely the residual value after claiming capital cost allowances. If you take the alternative route and say that it is a sale, then the entire cost of the building, \$45 million, is a cost of sale, a cost of sale of that building and it is deductible.

Mr. Walker: I've got just a couple of quick questions I would like to make, Mr. Chairman.

Mr. McCallum: Don't go away from it yet. Mr. Anson-Cartwright, if Mr. Genest put to you this problem; if the capital cost allowance is claimed and if in addition as is the case here, this is a single-purpose company, would you then agree that this terminal loss would not be able to be claimed? You ~~would~~ have a situation here shown where they get both capital cost allowances and a terminal loss, and all I am injecting into the proposition is that, as I understand, it is a single-purpose company and required to be sold by the ~~the~~ bond purchase agreement, and under the circumstances the ~~the~~ chances are excellent that they can't have their cake and ~~as~~ eat it too. Does that seem clear?

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Mr. Anson-Cartwright: No, it doesn't. ~

At the termination of the contract the property is disposed of and there is a loss for income tax purposes, a terminal loss. The company is still in existence, it is not then subject to the provisions of the lease agreement and so forth because that has been terminated. Now all it needs to do in order to ^{itself} avail of the terminal loss, is to have income from some other source of that magnitude.

Mr. Coles: Of that ___

Mr. Anson-Cartwright: Pardon me?

Mr. Coles: Of that magnitude within five years.

Mr. Anson-Cartwright: Of that magnitude within five years, but not of all the terminal loss. Some is applied in one year and some is carried back one year in these assumptions. And I present-valued it to, you know, ___

Mr. Genest: One more point on this. If capital cost allowance is not available, is it not a fact, at least after the first two years, ^{that} the concept you've used of re-investing the cash flow is drastically changed?

Mr. Anson-Cartwright: You would have to take in the ~~extra~~ rental income over a period of years as ~~a~~ proceeds of sale, and they would be spread over the term of the contract. Initially you might have an increased cash flow and subsequently you would have a reduced cash flow.

Mr. Genest: But you ^{don't} have to the same extent the concept of the tax, of the interest-free loan from the Department of National Revenue that the claiming of capital cost allowance gives you. Am I not correct on that?

Mr. Anson-Cartwright: It is varied, that is ~~xxxxxx~~ correct. That would apply ^{that} that assumption would apply if the rents came in, the commercial rents for example came in in various stages too. if they were ^{then} \$6 and ^{then} \$10 and \$15, same sort of principle.

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C.B.

Mr. Genest: Am I correct in understanding that the value of the capital cost allowance to a developer is very much increased if he has other income from other buildings against which to claim the depreciation he is entitled to?

Mr. Anson-Cartwright: Again you are talking about ~~early~~ early years vs later years, that shifts the cash flow, but in my calculations I have claimed capital cost allowances only to the extent of net income, not creating any loss.

Mr. Genest: ~~You're not taking into~~ From the building, you are not taking into account a shelter, the provision of shelter for outside income?

Mr. Anson-Cartwright: No.

Mr. Chairman: You know you, you realize the advice you are giving here may be detrimental to the Province of Ontario?

Mr. Genest: Oh, that's right. I don't hold a brief for them! ~~that~~ There are a couple of other questions, I don't want to prolong it, I know everyone is tired.

Mr. Chairman: Yes, ^{go ahead.} Mr. Walker wants to ask a question and Mr. Glen Hodgson, but —

Mr. Genest: I'm sorry.

Mr. Chairman: No, if you want to clear this up, Mr. Genest, — anything further.

Mr. Genest: Going to Appendix A, ~~situation 1~~ situation 1, ~~at~~ I read that document, and I'm usually wrong when I read these documents, the capital cost allowance totally shelters there, I see, the income for the first 15 years, is that not right?

Mr. Anson-Cartwright: That's right.

Mr. Genest: So there is no income tax at all payable for the first 15 years.

Mr. Anson-Cartwright: That's right.

Mr. Genest: And ~~it is to you that that situation would~~

~~be the case.~~

H 2634 to follow

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B.G.

~~Mr. Anson-Cartwright: That's right.~~

Mr. Genest: And I put it to you that that situation would not prevail in the event that the matter was treated as a sale.

Mr. Anson-Cartwright: I have already said that.

Mr. Genest: Yes, and I also put it to you that in your present-value calculations, it's the money that you get in the first years of the contract that makes up the ~~bulk~~^a bulk of ~~the~~ present-value calculation. Do you agree ~~also~~ with that?

Mr. Anson-Cartwright: I would agree with that.

Mr. Deans: I was just wondering, ^{was} ~~is~~ there a conclusion, or are you just agreeing?

Mr. Genest: He's agreed with that, so that - well, yes - I just want to follow through, the fact is that the benefits of totally sheltered income in the first fifteen years is lost, and I think you've agreed that it's not off^uset by the ability to ~~offset~~ claim costs if the transaction is treated as a sale.

Mr. Anson-Cartwright: The benefit of totally sheltered income is lost; the total benefit of sheltered income is not lost.

Mr. Genest: And you can't estimate the amount, the differences to-day?

Mr. Anson-Cartwright: No.

Mr. Genest: Would you agree that they would be substantial?

Mr. Anson-Cartwright: Not without some calculations, no.

Mr. Genest: So you are not in a position to tell us to^uday as to whether these figures would look entirely different if capital cost allowance were removed and the other deductions and compensating factors you mentioned were substituted?

Mr. Bullbrook: Well, he said he wasn't, and he gave his reasons for it.

Mr. Anson-Cartwright: Would you repeat your question so that I can make sure I understand it quite clearly?

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Mr. Genest: Well, Mr. Bullbrook, I thought you had answered ~~me~~, but perhaps I am just beating a dead horse, and I see Mr. Shibley thinks I am.

Mr. Chairman: I tried to state my position in any event that --

Mr. Genest: ~~You are the chairman~~ ^{my questions, Mr. Chairman} -- just a few more on unrelated ~~other~~ ^{un} topics, ~~and the same topics aren't~~ related to capital cost allowance.

Mr. Chairman: Well, all right, I think maybe Mr. Walker's question was related to capital cost, wasn't it?

Mr. Walker: Yes, Mr. ~~Cartwright~~ Cartwright, there are six points listed in the bulletin produced July 5th by the Department of National Revenue and of those six points my rather quick reading, which amounts to merely listening to it this afternoon and reviewing it, suggests that the Hydro ~~project~~ ^{project} falls within, at least four, ~~one, two, three and six~~ ^{1, 2, 3 and 6}, almost on all fours. But you are saying nevertheless, that your distinction is that there is one non-taxing ^{- paying} entity involved as one of the ~~partners~~ partners, lessee or lessor, in the deal. Is that your primary distinction?

Mr. Anson-Cartwright: Well, I think my primary distinction is that this is a policy statement by the Department, and ~~the~~ ^{the} ~~we never were able to get~~

Mr. Walker: I've never ~~been~~ been able to get around one of these ~~policy~~ ^{tax and} policies whenever I've been before the Tax Appeal Board, however.

Mr. Anson-Cartwright: ~~As I say~~ As I say, the main intent of the bulletin was to preclude a corporation from entering into a transaction with depreciable capital property, and avoid a recapture of the depreciation that it has claimed. There is no possibility of that happening in this particular transaction. Also, I would take into account that Hydro is a non-taxable corporation, or entity. There are other factors, I think, we should probably ^{if} if you are going to say four out of six, we should probably go into the six items. I don't think there is any question of guarantee of the obligations of the owners.

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B.G. =

Mr. Walker: Where are you?

Mr. Bullbrook: Are you going to go through them?

Mr. Anson-Cartwright: Well, ^{yes,} let's go through them. I
tu think that's probably the fairest thing to do.

Mr. Walker: We'll just refer to them by number rather
than reading them.

Mr. Anson-Cartwright: All right. ~~as is the option to~~
~~purchase, exercisable within a period which is materially less~~
~~than~~.

(Tape H-2635 follows)

H-2635-1

(Mr. Anson-Cartwright)

"(1) Is the option to purchase exercisable within a period which is materially less than the useful life of the property?"

I have no particular comment on that. I would think that it is a judgement factor as to whether the useful life of a building in Metropolitan Toronto is in excess of 30 years.

Mr. Walker: Hydro thinks that this building will be worth something at the end of 30 years. That is one of the key premises throughout this whole thing.

Mr. Anson-Cartwright: Well, I'm saying there are a number of large buildings in this city that have been torn down that weren't 30 years old.

Mr. Walker: Of course, by the same token we are making a judgement on a 30-year basis at the initial year rather than at the terminal year. At the terminal year we have the benefit of hindsight knowing whether it is going to be knocked down at year 28 ^{or} was ~~not~~ knocked down at year 28, or will be knocked down at year 40.

Mr. Anson-Cartwright: But don't forget the department has to prove its point as to whether the useful life of this building is more than 30 years. And I am saying there are very strong arguments that buildings in a city such as Metropolitan Toronto might have a useful life of less than 30 years.

Mr. Walker: That can be argued precisely the other way *as well*.

Mr. Anson-Cartwright: I don't dispute that. But you are saying we fall squarely within four points, and I just don't see that.

2) ^{...} Does the lessee have the right to acquire the property ^{...} at less than probable fair market value? That falls within. We have a sale here at \$1.

Mr. Genest: But we don't. We don't have a sale at \$1. We have an automatic reversion of the building to Hydro, plus a clause that ~~sells them~~ ^{on top of that} we'll give you a conveyance for \$1?

Mr. Deans: No, but it doesn't say "sale", it says "to acquire the property." They are obviously going to acquire the property.

Mr. Genest: No the property reverts automatically without any Act ~~being~~ ^{that} that is what the agreement says.

Mr. Walker: I think Mr. Deans is agreeing with you.

H-2635-2

Mr. Bullbrook: No, that isn't what the agreement is saying, it says "and". The agreement says "and". ^{As} I read the agreement, both things had to be done.

Mr. Genest: But you don't need the \$1 in the conveyance.

Mr. Anson-Cartwright: My point is that there is ownership by the developer at a particular time, and the ownership passes to the lessee for a nominal or no consideration at the end, if you want to make that point. But I ^{say} ~~say~~ the intent of that particular. I'm reiterating so many times, but the intent of that particular factor was to avoid the situation where somebody ~~it~~ claimed capital cost allowances, it reverted to somebody else for \$1, and the ^{he} ~~they~~ could sell it for a capital gain and have no recapture of depreciation. ⁱ ~~i~~ In other words, a double deduction. There is no instance here of a double deduction of rent and capital cost allowance.

~~He said~~
Mr. Deans: You're not telling us what it says, you are telling us how we should interpret it knowing the background.

Mr. Anson-Cartwright: I say we fall under that.

Mr. Deans: I just want to understand that what you are saying to us is that we should interpret it, if we were going to interpret it, with the background that you have provided as to what ^{it} ~~was~~ intended to cover.

Mr. Anson-Cartwright: No, not with the background that I have provided, but with the example in the bulletin, if I could just show you that.

I wonder if somebody could help me find that particular...

Mr. McCallum: Are you talking about number 2?

Mr. Anson-Cartwright: No, I'm talking about...

Mr. Deans: You are saying that the other extreme ^{is} ~~is~~ the case ~~that~~ the property is rented on terms that call for the title to pass to the lessee at no additional cost...

Mr. Anson-Cartwright: Yes, the department's principal interest—paragraph 2, on page 2; now that paragraph in my view has quite a bearing on factor 2. It says;

"The Department's principal interest is to see that significant sums paid for the purchase ^{by} ~~of~~ of property are not →

(Mr. Anson-Cartwright)

~~It is~~ charged against income as rent." Well, Hydro has rent, but it doesn't affect the tax position of Hydro anyway, because Hydro is a non-taxpaying entity.

"Of which no recapture can be made from the lessee who exercises his option and then sells the property at a price which reimburses him for all or part of the rent."

Now, that particular clause, in my view, bears on the factor in (2) that I admit, quite clearly, that we fall under that item.

"(3) Where the property was acquired by the lessor to meet the special needs of the lessee and will probably be usable for that purpose by the lessee only."

I don't think we fit into that category. I think that you have got a building that is available to any - not any tenant - but most tenants. Now, so far, we have gone down to (3) and I . . .

Mr. Walker: That could be a debatable one.

Mr. Deans: I doubt it.

Mr. Walker: It could be that that . . .

Mr. Anson-Cartwright: Well, they are all debatable. That's why we are discussing this thing. But I am saying that the department has to justify its position, not only assess, but make it stand up, and all of my ~~shown to~~ ^{shown to be} being assessed on a regular basis for ~~various~~ various items, and it is a question of judgement as to whether the assessment ~~will~~ will succeed.

"(4) Does the term of the lease correspond substantially to the estimated useful life of the property with the lessee ~~obligated~~ obligated to pay costs such as taxes, insurance . . ." and note this ". . . and maintenance which are usually considered incidental to ownership?"

"The lessee obligated" - they are talking here about a net-net lease. That is what that item ~~(4)~~ (4) is about. And as you well know, the maintenance is being borne by who - the lessor, not the lessee.

(Mr. Anson-Cartwright)

So we don't qualify on that item (4)

"(5) Has the lessee guaranteed the obligations of the lessor with respect to the property leased?"

I would say we don't fall under that section.

Mr. Walker: I excluded those two in my initial - those two.

Mr. Anson-Cartwright: Item (6)

Mr. Deans: ~~WR~~ come pretty damn close

Mr. Anson-Cartwright: "Is some proportion of the periodic rental payments specifically designated as interest or readily recognizable as the equivalent of interest?"

In the lease agreement per se, there is no comment about the interest factor being included in the rental payment. ~~but~~ I might say that in that particular area, the department is really trying to say, "Is the rent a fair market rental?" In other words, if you have got a rent of \$20 a ~~square~~ square foot when, in the market place, it's really \$6, then they want to know the reason for the increased rental, and I think there has been testimony to the effect that the \$4.84 per square foot is a fair market rental and I think the department would ~~be~~.

Mr. Genest: The whole idea ~~was~~ that Hydro would get something cheaper than the fair market rents ~~and~~ it's paying downtown.

Mr. Anson-Cartwright: All right, cheaper then - that's even better. That improves my argument. That improves my argument, I would say.

Mr. Walker: Just continuing then, this list, of course, is not exhaustive and there are other factors, or ~~could~~ could be other factors which may bring it within the "sale provision."

Mr. Anson-Cartwright: From the legal viewpoint, as I understand it, the department has to say ~~that~~ that the developer or the lessor does not own the property, does not have title

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AA

(Mr. Anson-Cartwright)

~~70-1117-1118~~ to the property or does not - has not acquired the property for tax purposes, and I think that ~~that~~.

Mr. Shibley: We are talking about the building now, too.

Mr. Anson-Cartwright: I am talking about the building.

Mr. Shibley: Yes. Not the land.

Mr. Anson-Cartwright: Not the land. I recognize there is a ground lease. I think Canada Square's position would be ~~that~~ that they actually have ~~land~~.

Mr. Shibley: ~~own~~ Ownership.

Mr. Anson-Cartwright: ~~own~~ ownership of the property.

Mr. Shibley: Of the building.

Mr. Anson-Cartwright: Of the building - pardon me, of the building. I am talking about depreciable capital property in my terms.

~~Mr. Shibley: Well, all right. Just as long as it's~~

~~for a short~~

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V.H.

Mr. Walker: Well, just passing from that for a moment. The capital costing if it were available, capital cost allowancing, would be available to every developer, we agreed this morning, and in view of the remarks earlier, I think it would be — what is it? This was set up as one company doing one job...

Mr. Genest: Single-purpose company.

Mr. Walker: ... single-purpose company, there would be nothing else against which to write the ...

Mr. Anson-Cartwright: Capital cost allowances?

Mr. Walker: *Am I* right here?

Mr. Anson-Cartwright: I recognize that. That's ~~on~~ the schedules. There is no additional income.

Mr. Walker: So precisely the same thing was available, if it were available, would be available to Y and R, Ellis-Don, Canada Square and Horizon?

Mr. Anson-Cartwright: That's right.

Mr. Deans: You questioned Ellis-Don.

Mr. Anson-Cartwright: I questioned Ellis-Don, that's right, but they might have had -- they might have set up a special purpose development company, the same *as this*.

Mr. Walker: You presume they would?

Mr. Anson-Cartwright: Yes, presumably they would.

between I don't know their position but I am just trying to differentiate a contractor and a developer. All of the developers would have been in the same ...

Mr. Walker: Precisely the same boat.

Mr. Anson-Cartwright: ... position, whether it is...

Mr. Walker: Okay. Now ...

Mr. Anson-Cartwright: ... and the other developers, whose calculations I saw, took the position that they could have claimed capital cost allowance.

Mr. Walker: Now, with respect to the capital costing, I rather gather that no-one ~~gi~~ could give us a guarantee to us today in view of the debate that has ensued that capital costing

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(Mr. Walker)

would be available, ^bby the same token no-one could give a definitive answer and say that capital costing wouldn't be available. So there is ~~no~~ doubt in your mind. You wouldn't be prepared to give your guarantee

Mr. Anson-Cartwright: My ~~guarantee~~ would not be worth too much ...

Mr. Genest: Something lawyers and accountants never do?

Mr. Deans: But it is fair to say that you have given an opinion that you do believe that it's more probable than not probable?

Mr. Anson-Cartwright: Yes, I think that is right.

MR. Bullbrook: That opinion is substantiated by the fact that each developer, in rendering his proposal, took into consideration in costing his proposal the fact that he would be entitled to capital cost allowance. I don't know whether Mr. Genest wants to comment on that because I find that -- I ~~know~~ ^{realize} that we have got the balance of evidence here and its opinion

Mr. Genest: You've got it all. ~~I'll~~ ^{by the way} I'll argue with you that certain ~~departmental~~ ^{policy} you are not going to get it without a fight.

Mr. Bullbrook: I realize that and that goes without saying. I think the department would ~~be~~ ^{probably} doing less than their duty in connection with an amount like this.

Mr. Genest: ^{They are presumed} ~~they are presumed~~ ^{to} ~~know~~ ^{to} know something about those tax laws and how they want to administer them.

Mr. Bullbrook: But, Mr. Genest, may I put it to you quite bluntly and directly, What concerns me is, I don't know whether I subscribe entirely to ^{what} ~~Mr. Renwick~~ says, but I think we are going to have ^{to} ~~to~~ take ~~at least~~ into consideration, Mr. Chairman, this question of capital cost allowance. May I say this, what concerns me with respect to the commission, is this — and the analysis made by ~~the~~ Hydro — You have got ~~all~~ these

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(Mr. Bullbrook)

proposals all being submitted on the basis of capital^{post} allowance being available, and the only thing you have to contradict that basic^{ly} ~~that~~ is also supported to some extent by internal memoranda of Hydro^{and} the only thing we have is the advice of counsel that it won't be.

Mr. Genest: No^{all}, you see there ~~is~~ two things.

Mr. Bullbrook: No? Well, help me.

Mr. Genest: There are two ~~things~~ ^{factors} Mr. Bullbrook...

Mr. Bullbrook: By the way, I realize the eminence of counsel, believe me, in that connection. If you can see the problem ~~there~~ ^{that's real} ~~there~~.

Mr. Genest: You see, there are two ways to look at this, with respect to Mr. Anson-Cartwright, who I think believes that you go beyond it, but then that's the problem posed by Mr. Renwick. My suggestion, on behalf of Hydro, is ~~that~~ when you call for proposals, you know that each developer has a different tax position peculiar to ~~himself~~ ^{him} and you assume, as Mr. Zwig says, that he gives it his best shot, the rental rate he quotes reflects his own ~~personal~~ peculiar tax advantages. You can see, for instance, Mr. Tatham's evidence, that he was willing to pay less to get less money

H-2638 follows

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DT

(Mr. Genest)

~~You can see for instance Mr. Tatham's evidence that he was ~~was~~ willing~~
to pay less. ~~to~~ ^{to} get less money ~~to~~ ^{to} get the Hydro into the
Eaton Centre. Now, that ~~that~~ reflects his own peculiar position.
The submission I make is that ~~that~~ one way of looking at it is that
they've done that. When you get the proposal —

Mr. Bullbrook: You presume that they have given ~~it~~
their best shot.

Mr. Genest: Just like when you call for tenders. You
presume the low tenderer, every tenderer has given it his best shot,
and you don't go back and you don't try and ~~chisel~~ ^{chisel} them down.

Mr. Bullbrook: So there really was no room for
substantive negotiation ^{there}.

Mr. Genest: And Mr. ~~Renwick~~ Renwick has pointed out the
problem that you are in a hybrid here. ~~and~~ It is something I want to deal
with in my submission but there's no clear answer.

Mr. Chairman: Gentlemen, Mr. Glen Hodgson ^{tyos} on the
list before Mr. Bullbrook.

Mr. Bullbrook: Oh, I am sorry.

Mr. Chairman: Well, that's all right.

Mr. R. G. Hodgson: Mr. Anson-Cartwright, a single-purpose
company ^{and} this is something I can't quite understand ^{just} because
that single purpose ^{company} phrases out and if they have a tax position, that is
saleable or amenable with another company, if I understand right, and
is an asset then, their tax position.

Mr. Anson-Cartwright: I don't think that that would be
quite right. I think that the terminal loss at the end of the year
could only be used by Canada Square ^{limited} Limited, by the developer, by
injecting into that company additional income. There are restrictions,
~~and~~ if I could put it in the vernacular, ^{the} the sale of loss companies.
If there is a change in the business or if the same business is not
carried on, ~~then~~ then there will be, — pardon me, is it or or "and" —
a change in ownership, then the same business has to be carried on.
If there is no change in ownership, then any type of income can be
absorbed by the loss carried forward. So that your idea of trading

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(Mr. Anson-Cartwright)

in loss companies is not —

Mr. Genest: They plugged that a few years ago.

~~Mr. R. G. Hodgson:~~ Yes, but they could build another building.

~~Mr. R. G. Hodgson:~~ Yes, they can build another building and the revenues ~~the~~ from that —

~~Mr. R. G. Hodgson:~~ They could build another building with the funds —

~~Mr. R. G. Hodgson:~~ But it isn't a total loss as to an asset.

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Mr. Anson-Cartwright: No, there is — if you want to put it, it's a contingent asset.

Mr. Chairman: Now, Mr. Hodgson, are you through?
Mr. Allan.

Mr. Allan: Well, I just had one little question to ask to straighten me out. To come back to that matter of paying \$5.4 million for the value that you mentioned, am I right in assuming that the most I could hope to realize at the end of the 30 years and over that period was \$17,500,000 if I invested ~~the~~ it?

Mr. Anson-Cartwright: That's right.

Mr. Allan: Because it seems to me that you couldn't look upon that as any kind of a sound investment because \$5 million, as you say, doubles itself in nine years, particularly if you are not paying any tax, and in 18 years you would have —

Mr. Anson-Cartwright: Excuse me, that is on an after-tax basis. You see, you ~~are~~ are really talking about ~~the~~ this is on an after-tax projection, Mr. Allan.

Mr. Allan: This is on the after-tax --

Mr. Anson-Cartwright: After-tax basis and therefore it's four per cent.

Mr. Allan: But if I bought this, if I took the place of Canada Square, wouldn't I be in a position that I could benefit from the capital allowance?

Mr. Anson-Cartwright: No, listen, I think your point is that if you had a sale, you would have \$5.4 million in profits. That's the

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†Mr. Anson-Cartwright)

EAM equation of —

Mr. Allan: No, I am thinking about the person who
buys it

Mr. Anson-Cartwright: ~~By~~ Buys which? The company?

Mr. Allan: Yes.

Mr. Anson-Cartwright: Well --

Mr. Allan: Buys that company and supposedly those
assets.

Mr. Anson-Cartwright: All right. That income stream.
\$5,400,000 invested at eight per cent before tax --

Mr. Allan: But I shouldn't have tax, should I?

Mr. Anson-Cartwright: Oh, sure. If you are just having
that — now, you are talking about —

Mr. Allan: I am taking the place of Canada Square,
in the operation of the building.

Mr. Anson-Cartwright: If you are purchasing Canada
Square, at the end of the term you will have accumulated profits of
~~\$17,500,000 for which you are going to pay --~~

(H-2639 to follow)

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6:25 - 6:30 pm
C.B.

(Mr. Anson-Cartwright)

~~Canada Square at the end of the term you will have accumulated~~
profits of \$17.5 million for which you are going to pay ~~the~~ \$5.4 million.

Mr. Allan: See, to work it backwards, I'm trying to indicate that it doesn't seem to me that something that is going to be \$17.5 million in 30 years is worth \$5.4 million today.

Mr. Anson-Cartwright: I'll tell you why that is, and I think the only reason that you ^{can} come to that conclusion is you ^{are} compounding at eight per cent. But you should be ~~compounding~~ compounding, as I say in these calculations, on an after-tax basis which is four percent, and \$5 million invested at four per cent on an after-tax basis will come to about \$17.5 million. That is really ^{what} ~~what~~ the calculation is.

Mr. Allan: To put it another way, the \$5 million that is the assets that Canada Square have in this, and they shouldn't be paying taxes.

Mr. Anson-Cartwright: That's right.

Mr. Allan: They shouldn't be paying any income taxes. We've just been talking about that and we've decided that they shouldn't.

Mr. Anson-Cartwright: You see, on their cash-flow they do pay income taxes as reflected in the last 15 years or so. They have very substantial income taxes. For which I have...

Mr. Allan: It probably works out. I'm not going to attempt to buy it. I'm not thinking of that. But I couldn't really settle in my ~~own~~ mind why that \$5 million wasn't ~~worth~~ worth a lot more than \$17 million at the end of 30 years.

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Mr. Anson-Cartwright: Well, turn to exhibit ...

Mr. Allan: No, I won't go through it. No, I'll get shot if I don't shut up. The Chairman is very mean to me.

Mr. Chairman: I thought you were going to go to Equitable Life and see whether you ^{could} get a 100 per cent loan on it and buy it.

Mr. Bullbrook: He's ~~not~~ going to company X.

Mr. Chairman: Mr. Genest.

~~Mr. Bullbrook~~ ...

Mr. Genest: Mr. Chairman....

Mr. Chairman: I said I would give you a chance to clean up. I know some of the committee members have left but to be on the record.

Mr. Genest: I just have a couple of questions because I know we are all getting tired. Mr. ^{ten} Anson-Cartwright, I've forgot^{ten} the exhibit number of this, but the Hydro estimated cash flow of Canada Square, you referred to it in your evidence. Do you agree with this as a proper and fair representation of what it purports to show? Have you seen it?

Mr. Anson-Cartwright: Yes.

Mr. Genest: Is there any concept that you disagree with, or do you think that presents an unfair improper picture?

Mr. Chairman: What is the exhibit number on that, Mr. Genest?

Mr. Genest: 236.

Mr. Shibley: 236.

Mr. Genest: Do you agree with me that the profits to be earned by Canada Square ~~are~~ are extremely sensitive to the revenue received from the commercial areas?

Mr. Anson-Cartwright: Yes.

Mr. Genest: And that Mr. Moog is taking a substantial risk in that respect?

Mr. Anson-Cartwright: I'm not saying that I agree with that. In this exhibit 236, the first three assumptions are that

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C.B.

(Mr. Anson-Cartwright)

there is no commercial rent, ^tthat there is the ground floor leased only at \$6 [✓]this is over the term of 30 years [✓]and I think that the first four propositions are not reasonable.

Mr. Genest: When you say that, do you have regard for the evidence of Mr. Tatham, who Mr. Shibley described as a person amongst witnesses, who ~~were~~ ^{was} unwilling to really take a risk on commercial areas, and who gave it as his view that the prospects of making a successful venture in the commercial area were very dim?

Mr. Anson-Cartwright: I don't think ~~that's~~ that's my position to take.

Mr. Genest: Is that not a fair statement?

Mr. Shibley: I should be jumping up and down right now and saying, "MR. Genest, that's not what the man said".

Mr. Deans: I've got a feeling this is deteriorating.

Mr. Genest: YOU know it probably is, I think whatever questions I'm asking are going to be lost. The last question I have is, is there anywhere you ^{my} can give a ballpark estimate, or has that been asked? [✓]the difference in the present value [✓]the Canada Square profits on the [✓]assumption that capital cost allowance is not available?

Mr. Anson-Cartwright: I've been asked and I just said —

Mr. Genest: No way?

Mr. Anson-Cartwright: Well, I could compute it but I don't have the

figures here.

Mr. Genest: That is the figure we were going to give you Monday morning but you decided you didn't want it.

Mr. Walker: He has asked for a ballpark. ^{Is} ~~was~~ he prepared ^{to} ~~the~~ ballpark, it a bit?

Mr. Anson-Cartwright: I just don't think that that's the type of thing that an expert witness should be doing.

Mr. Chairman: You used ^{the} ~~the~~ ballpark figure yourself, Mr. Walker, and that's what he said ^{to} ~~to~~ you too.

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C.B.

Mr. Walker: That may be the last question *of this hearing*.

Mr. Bullbrook: It is important to Mr. Genest, and

you make a valid point, we are all getting a little edgy to go home, but I don't want you to end up....

Mr. Genest: That's right, but *I'm concerned about* ~~the~~ the record...

Mr. Bullbrook: Well all right, this is important...

H 2640 to follow

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B.A.

H-2640-1

~~Mr. Chairman: That's right, you must think about the~~

~~Mr. Bullbrook: All right, well this is important~~

~~Mr. Bullbrook: Yes, yes.~~

~~Mr. Bullbrook:~~

Mr. Chairman: I'm listening to you, Mr. Genest.

Mr. Bullbrook: ~~I am responsible too,~~
because I just got up ^{and} ~~and~~ thought I would like to go home, but
that's unfair to you. You people have been sitting here for
14 weeks, and it is very important that we, as members, listen
and you take ~~some~~ your time asking the questions. Right? It
is very important.

Mr. Chairman: That is quite right.

Mr. Genest: Well, there is one more point that I want
to make and it is following up on Mr. Allan. I wasn't happy with
where we were left; I didn't ^{whether} know ~~we~~ followed it up. ^A And that
is the discount rate, ~~which~~ you have eight per cent, which
you applied ^Y to arrive at a present value, which I take is an
equivalent to what you get on a government bond, nowadays, and
I am puzzled why you used ^{that one} ~~one~~, having regard to the risks ~~were~~
involved, why you use ^{that one} such a rate in arriving at present value.
Should it not be considerably higher?

Mr. Anson-Cartwright: If you can borrow money on the
security of this particular transaction at eight per cent, I
assumed that you could use with equal validity a present value
rate of eight per cent.

Mr. Genest: I don't buy that, Mr. Anson-Cartwright.
The money borrowed is on the strength of ^a ~~come hell or high water~~
~~fail-safe~~ fail-safe covenant by Hydro to pay \$3.24 directly to the
Prudential no matter what Canada Square does, and the risks involved
in Canada Square's position ^{of} ~~and~~ escalation, maintenance, and so on.
~~and~~ are not present in that. Don't you agree with that?

Mr. Anson-Cartwright: I think you also have to take into
account in that regard, the investment, that is at risk. You say it

(Mr. Anson-Cartwright)

a single-purpose corporation, it only has the one transaction in it. When you are talking about risk related to investment, it would seem to me.

Mr. Genest: Well, no, it has to build a building. It is going to start out in November of 1972 with a flat piece of ground.

Mr. Anson-Cartwright: I have recognized the risk in construction costs at the inception. You are talking about a discounted cash flow and the rate of interest to be used there. I think that the eight per cent is logical ~~and~~ in this particular case.

Mr. Genest: Would you not agree that even just ignoring all the risk factors that I have mentioned, but ^{let's} just take the ~~the~~ risk factor that you won't get your capital cost allowance, ~~should~~ that is a matter of uncertainty, I think you put it that way. Should not that affect your discount rate?

Mr. Anson-Cartwright: I think I have indicated to you the reason that I used the eight per cent discount rate.

Mr. Genest: That is not answering my question.

Mr. Anson-Cartwright: ^{right} I'm sorry. Would you repeat the question please? ^{ask?}

Mr. Chairman: Remember these questions are coming ~~to~~ ^{through} me.

Mr. Genest: Should not the uncertainty relating to your right to claim capital cost allowance be reflected in the discount rate?

Mr. Anson-Cartwright: Yes, it should.

Mr. Genest: Can I put it to you that eight per cent doesn't reflect that?

Mr. R. G. Hodgson: But that presumes that the other side of the coin.....

Mr. Genest: Could I have an answer to my question, please, Mr. Chairman?

Mr. Anson-Cartwright: I think that the eight per cent factor is a reasonable factor in all the circumstances.

Mr. Chairman: Mr. Hodgson, you had a comment to make?

~~Mr. Hodgson:~~

Mr. Genest: That's not an answer.

~~Mr. Hodgson:~~

Mr. Hodgson: But that presumes that Hydro has a benefit the other way too, if it doesn't.

Mr. Deans: ~~Thank~~ In the Legislature that would be considered an answer.

Mr. Genest: With respect, Mr. Chairman, I don't believe I have had an answer.

Mr. Chairman: Could we have your.....

~~Mr. Genest:~~

Mr. Genest: Is that the best one I can get?

Mr. Chairman: Could we have your answer again?

Mr. Anson-Cartwright: Could we have the question again?
You are saying, "Did I take into consideration all the risk factors?"

Mr. Genest: No, no, I put it to you that ~~all~~ the uncertainty to which you have testified this afternoon as ^{to} the ability to obtain capital cost allowance, is not reflected in an eight per cent discount rate. You don't understand the question?
~~My point is this, that if you are not sure, your calculations of that \$17 million~~

(Tape H-2641 follows)

H-2641-1

(Mr. Genest)

My point is this, ^{that} ~~if~~ if you are not sure, your calculations of that ^{figure} 117 million is based on your ability to attain capital cost allowance with all that that entails, having regard to the uncertainty of being able to obtain those benefits, is not the 8 per cent discount rate you have applied to arrive at a present value insufficient? Is that not clear?

Mr. Chairman: No, it is not clear to me. It may be clear to Mr. Anson-Cartwright. Is it clear, Mr. Deans?

Mr. Genest
Mr. Deans: Yes, it is.

Mr. Anson-Cartwright: I think what you are asking me, does 8 per cent take into consideration all of the risks? I think it is a reasonable rate of interest. I have no further comment.

Mr. Chairman: Taking into account all the risks?

Mr. Anson-Cartwright: Taking into account all the risks.

Mr. Genest: And it is the same as a government bond.

Mr. Chairman: Now, Mr. Hodgson, coming back to the interjection that you wished to make.

Mr. R.G. Hodgson: I think the other side of the coin on that one is that Hydro did not take advantage like they did on some of the other clauses in their agreement, that if the thing is collected some time in the future that they ~~have~~ got some benefit, and they didn't negotiate that.

Mr. Chairman: Well, that was the point that I was trying to make some time ago, that certainly it is an uncertain factor, but I am not so sure that Hydro took this into account anywhere in their ~~that~~ negotiations. However, Mr. Genest.

Mr. Genest: Mr. Chairman, that's in the fact of Mr. McCallum's evidence? That's not very flattering.

Mr. Chairman: I'm not suggesting that.... this was before Mr. McCallum came into the picture.

Mr. Shibley: Mr. Anson-Cartwright, you by examination of the files of the various developers, ascertained from the material whether the developers were contemplating a claim for capital cost allowance when they worked up their submissions to Hydro. Is that correct?

H-2641-2

Mr. Anson-Cartwright: Yes.

Mr. Shibley: And among the material in the file, for example, of Ellis-Don was there a computer runoff of capital cost allowance? Is that ~~correct~~ correct?

Mr. Anson-Cartwright: Yes.

Mr. Shibley: And is that what you have in front of you there?

Mr. Anson-Cartwright: Yes.

Mr. Shibley: And from your analysis of their computer runoff, was that developer anticipating a profit based on taking capital cost allowance?

Mr. Anson-Cartwright: Yes.

Mr. Shibley: I believe that was done by
believe

Mr. Anson-Cartwright: I ~~know~~ it was done by Ellis-Don's auditors.

Mr. Shibley: Who are Clarkson Gordon?

Mr. Anson-Cartwright: Yes, I believe so, but I'm not that positive on that score.

Mr. Shibley: Did you take off figures from that computer run off to ascertain what Ellis-Don were anticipating as profits on their submission?

Mr. Anson-Cartwright: I did an analysis... I tried to summarize it. Just one moment...

Mr. Genest: Well now, Mr. Chairman, this is something I have had no notice of. We took a lot of trouble to get Mr. Shibley to give us advance notice which we got sort of last night at six o'clock as to what Mr. Anson-Cartwright would say, so we would be in a position to reply to it. You are putting me in a position of saying I want an adjournment ~~to~~ ^{until} Monday so I can study it. I am not prepared to deal with any Ellis-Don figures. ^{Why don't we drop this} ~~is that important?~~

Mr. Shibley: Well, I just want to demonstrate the point that ^{the Bullback. All right we can go and eat and come back here at 7:30 if you} is starting to look large in the evidence of today as to whether, in dealing with the developers in January of 1972, in July of 1972, the developers posture was one of taking capital costs allowance, making measure of profits based thereon, and whether Hydro should have taken better advantage of it. And I want to ask this witness,

H-2641-3

(Mr. Shibley)

having regard for the data that was right in the Ellis-Don proposal, what were the figures that they were working to in terms of their profits on this transaction?

Mr. Chairman: How will Mr. Anson-Cartwright know these figures of *certainty*?

Mr. Shibley: He has got the computer run off from the Ellis-Don file and he has made calculations from them, *Mr. Chairman.*

Mr. Chairman: ^{And} that was in evidence, what he worked from?

Mr. Shibley: I didn't put the computer on ^{run} ~~the~~ off ⁱⁿ ~~end of it~~. If I have to prove a formula, I can. I am presuming, surely, that I'm not going to be put to that.

Mr. Chairman: Well, I meant the evidence that the computer runoff was made from.

Mr. Genest: I don't want to be difficult. How reliable is the computer runoff? Do you know that?

Mr. Shibley: It is as reliable as Clarkson Gordon having taken it off.

Mr. Genest: Well, how do we know that? I didn't hear anybody say Clarkson Gordon took it off.

Mr. Finlayson: Anything Ellis-Don puts into a computer I think ought to be taken with a great deal of suspicion.

H-2642-1 follows

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6:40 - 6:45 p.m.
B.G.

H-2642-1

(P. Genest)

~~Mr. Spibley: Well, it looked to me~~

~~Mr. Genest: I don't know what date Glanville, Gordon took
it off.~~

~~Mr. Finlayson: Anything Ellis can put into a computer
I think ought to be taken with a great deal of suspicion.~~

Mr. Chairman: Well, gentlemen, I don't think there is
going to be much gain by pursuing this. The hour is late. Are you
content, Mr. Genest, that we're not cutting you off?

Mr. Finlayson: Say "yes".

Mr. Genest: I've got a coach here.

Mr. Chairman: Well, he represents different interests
than you do, Mr. Genest.

Mr. Genest: You know there is one thing that is bothering
me. I think the arithmetic is ~~wrong~~ right, but I just want to
clear it up with Mr. Anson-Cartwright, and that's the — go to page
6 of the report. Page 6, no, I'm sorry, it's not page 6. Where
the heck is it? Where do you make your assumptions on the — oh yes,
page 12. Just double it, page 12. You've got — on (b) you're
assuming, ~~that~~ you're making some calculations of profit which I
think show up in Schedule 1, page 21, I think, if you have both
those things in front of you. You are assuming that the revenue
from the upper concourse and ground floor is \$6.00 per sq. ft. ~~in~~
in which event the developer sees no profit from the commercial area.
And then your second assumption is \$10.00 per sq. ft., in which
there is a profit. Then, what's troubling me, and perhaps you've
worked it out in the arithmetic, is that in your first column on
Schedule 1 you are taking \$4.92, which is ^{the} sort of proposal rent,
instead of \$4.84, which reflects, you know, what the lease says
you are going to get.

Mr. Allan: But that's not a realistic figure.

Mr. Genest: Oh, well, I just want to — I want to know
if the \$10.00 there already takes up the \$6.00.

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Mr. Anson-Cartwright: No, the \$4.92 in the rent per square foot is \$4.84 pursuant to the agreement. I think Mr. Nastich could calculate that out.

Mr. Genest: Well, I was just concerned that you hadn't ~~add~~ added in the \$6.00 twice.

Mr. Anson-Cartwright: No, ~~no~~ no, sir, I think that you can compare ~~that~~ that schedule, which is number 3, I would just like to prove it ~~with the schedule exhibit~~.

Mr. Genest: But the exhibit -

Mr. Anson-Cartwright:—With Mr. Nastich's exhibit -

Mr. Genest: It's pretty close, is it?

Mr. Anson-Cartwright: You will see that my ~~that's~~ comparable to his calculation 4, Mr. Genest, which is the fourth one from the left.

Mr. Genest: Six and six.

Mr. Anson-Cartwright: Six and six; he ends up with a ~~cash~~ cash flow of \$262,490.

Mr. Genest: \$263,490.

Mr. Anson-Cartwright: \$263, — and mine is ~~\$282~~ \$289, ~~and~~ Now, that differential is partly ~~because~~ because of depreciation, I have proven that out, ~~partly~~ it's partly because of depreciation and it's partly because of -

Mr. Genest: ~~This is pre-tax~~ ~~and yours is~~ ~~it's~~ ~~it's~~

Mr. Anson-Cartwright: Well, he is taking \$3.24 per sq.ft. in the financing cost, ~~but not taking~~ he is taking sort of blended payments of principal and interest, and my figures have a large amount of interest in the initial years.

Mr. Genest: So the difference isn't substantial. My main concern was that you were not adding in the \$6.00 twice in effect, because you would have a much higher effective rent for the commercial area. You haven't done that?

Mr. Anson-Cartwright: No, no, I think the cash flows are that close that it -

Mr. McCallum: Mr. ~~Chairman~~ Chairman, could we just ask a question ~~of~~ about the papers that Mr. Anson-Cartwright is going to

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(Mr. McCallum)

submit? Did I understand him to say that he has worked out papers that indicate what the present value would be assuming that capital cost allowance were not granted and that a sale had been made, and that certain expenses could be used in the early years, and that he is going to give us ^a copy of those papers which he's worked on?

Mr. Chairman: Well, I ~~didn't~~ didn't understand he was going to give it to us.

Mr. McCallum: I am not ^{just} ~~too~~ sure ^{if} ~~we~~ ^{ever} ~~had~~ resolved exactly what it was that he had done and ^{had} was going to give to us.

Mr. Chairman: Well, that was the point I ^d ~~have~~ been trying to make earlier with Mr. Genest, whether he wants those papers in or not, and —

~~Mr. Genest: I'd like to see them. I'm going to be here Monday morning to talk to you briefly. I just don't like...~~

(Tape H-24643 follows)

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6.45 - 6.50 pm

2643 - 1 AA

(Mr. ~~Genest~~ Chairman)

~~these papers in or not and . .~~

Mr. Genest: I would like to see them. I am going to be here on Monday morning to talk to you briefly. I don't like the idea, Mr. Chairman, of evidence going into this committee, which I haven't seen and haven't had a chance to comment on.

Mr. Chairman: No, but I would rather not the evidence go in at all

Mr. Walker: I don't think it will help ~~at all~~ *us that much.*

Mr. Chairman: ~~Let's~~ in that sense. Now, if it has got to go in, then I think we open this all up again on Monday morning. . . .

Mr. Genest: I don't insist on it.

Mr. Chairman: If you ~~want~~ want to have a private chat with him, go ahead and ~~do~~ do so, but I don't want evidence to come before us that has come ~~without~~ without coming in across the tables here.

Mr. Genest: I agree.

Mr. Chairman: MR. Shibley says he hasn't seen anything. Mr. Anson-Cartwright wouldn't even give a ballpark figure on it. I think he did some work on it, but has forgotten what the figures were. Now, if you want to have a private chat with him, go ahead.

Mr. Genest: I am satisfied for the time being.

Mr. Chairman: If you want ~~the~~ the committee to use it as evidence, then I think we have it formally presented and everybody a chance to make comment and enquiry of it.

Mr. Genest: Well, I am not asking for that.

Mr. Deans: For the time ~~being~~ being means that you're satisfied.

Mr. Genest: Yes. I want to go home.

Mr. Shibley: Well, now, let's be clear on that, because I have a feeling that all of this material is not worked up and if it has to be worked up

(Mr. Anson-Cartwright)

Mr. Anson-Cartwright: It would have to be reworked on.

Mr. Genest: It's a lot of work.

Mr. Shibley: There is a lot of work involved.

Mr. Genest: Forget it!

Mr. Chairman: I can't ^{see} in my mind, at this point, that it's very material. Are there any other questions?

Mr. Allan: What time do you meet Monday?

Mr. Chairman: Ladies and gentlemen, we will be meeting at 10 o'clock, ~~Monday~~ Monday morning, for summations by the counsel for Ontario ^{Hydro} and Canada Square. If you have any preferences in the order that you would give that in.

Mr. Genest: Mr. Finlayson and I can work that out. I take it the committee is indifferent as to who goes first.

Mr. Chairman: If you can't work it out, I would call on Mr. Finlayson ^{first}, but if the two of you agree otherwise, that's up to you, but otherwise, we would hear Mr. Finlayson first.

Mr. Bullbrook: May I say something.

Mr. Chairman: Yes.

Mr. Bullbrook: I just wanted to point out to counsel that I just cannot be here on Monday, unfortunately, and in not being here on Monday, I don't want you to assume that I won't read what you have to say and take it under consideration.

Mr. Chairman: Now, Mr. Anson-Cartwright, you have worked hard and long on these figures. You have ^{had} quite a gruelling this afternoon. This is really the first occasion we have had any extensive examination from you ~~here~~ ^{2222 (NOISE ON TAPE)} and I apologize for that, but it was the simplest way, I think ^{near} to handle ^{it}. But it has made it doubly difficult for you ^{and} and I thank you very much on behalf of the committee and on behalf of all of us for your work on this and for your testimony here today.

Mr. Anson-Cartwright: Thank you.

Mr. Chairman: There is no more evidence to put before

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6.45 - 6.50 pm

2643 - 3 AA

(Mr. Chairman)

the committee.

We are adjourned for counsel summations to 10
o'clock on Monday morning.

COMMITTEE RECESSED AT 6.50 pm .

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC
James Bradshaw

Partner, Price Waterhouse & Co.:

R.M. Anson-Cartwright, FCA

Assistant general manager, finance, Ontario Hydro:

Milan Nastich

Vice-president, finance, Canada Square Corp. Ltd.:

W.C. Coles

List of exhibits introduced during this sitting appears
on the next page.

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Page</u>	<u>Description</u>
237	2610-1	Report to Select Committee of Legislature of Ontario on Financial Aspects of Ontario Hydro Head Office Building, September, 1973 - by R. M. Anson-Cartwright.
238	2622-3	Interpretation Bulletin IT-17 - July 5, 1971 - Department of National Revenue.

Hd

LEGISLATURE OF

JOINT COMMITTEE

HYDRO HEADQUARTER

Monday, September

Meeting Session

2644-2672

Sept. 17, 197
10.11-10.15 a.m.
M.F.

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

H - 2644 - 1

The committee met this morning at 10.11 a.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order. Mr. Genest.

Mr. Genest: Mr. Chairman, I have been asked by Mr. Nastich to correct an impression that he left with the committee. I think he warned the committee at the time he gave that evidence that he wasn't certain, and that's in connection with a statement that Mr. Nastich made about income derived by Hydro from power sales to the United States.

I think Mr. Nastich cautioned the committee at the time that this was something he would have to check, ^{but that} ~~when~~ his impression was that the income received was in U.S. dollars. He has checked this and he has found out that his impression was wrong. He is very anxious that the committee not be misled by what he said the other day. The income under current Hydro contracts is, in fact, payable in Canadian dollars, and Mr. Nastich was anxious that that be made.

Mr. Renwick: I take it that the range is still correct that he spoke about?

Mr. Genest: Of the income figures? I believe they are. Here, I have the figure. The sales to the United States are \$40 million; the profits on sales are in the range of \$19 million. Those are the accurate figures.

Lastly, Mr. Chairman, I have a last exhibit that I am sorry it should come at this late date but I would like to have it filed. Perhaps I can -----

Mr. Chairman: You yourself are entering it as evidence, Mr. Genest?

Mr. Genest: We'll call it exhibit number -----

H - 2644 - 2

Mr. Chairman: Number 239 is the next exhibit.

Mr. Genest: It says 3,874 here. We perhaps over-estimated the time it would ^{take} or the number ^{it} would be ~~used~~ ^{generated}-----

Mr. Chairman: I would appreciate it if you would distribute one to each member of the committee and the press. The number that you have given ^{that} ~~out~~, Mr. Genest?

Mr. Genest: Is 3,874, Mr. Chairman.

Mr. Chairman: 3,874. Mr. Clerk, if you will mark that as such.

Mr. Genest: Mr. Shibley won't mind me saying "let it be his epitaph".

Mr. Chairman: Maybe the committee's.

Mr. Shibley: I don't mind at all.

Mr. Chairman: I have officially marked that -----

Mr. Genest: I am afraid there is much truth in the humour.

Mr. Chairman: Now when we were here on Friday the suggestion was that unless you decided between yourselves that Mr. Finlayson, on behalf of Canada Square, would proceed first, followed by Mr. Genest, and I gather that's the order you wish to follow? Mr. Finlayson.

Mr. Finlayson: Yes, we volunteered me, Mr. Chairman. I have most of this reduced to writing, Mr. Chairman. I would ask the Clerk if he would distribute this to the members of the committee.

Tape H - 2645 follows

Sep. 17/78
10.15 to 10.20
fvi

(Mr. Finlayson)

~~...the committee of the hearing has written the Chairman ...
which would be distributed to the members of the committee.~~

Mr. Chairman, now that that's been distributed, I'd just like to read it, then I have some supplementary remarks to make.

As today is the 50th^{hearing} date of this overly long proceeding it might be appropriate to remind the committee as to the reason for the ~~lengthy~~ legislature entering the inquiry. It was certainly never intended that this length of time be spent inquiring into the merits of a commercial transaction.

The inquiry was caused by the complaint of a disgruntled competitor of Canada Square coupled with the later statement reported in the press that the complainant had been told by "someone close to the Ontario cabinet and high up in the Progressive Conservative Party" to "keep his mouth shut or he would never get another government job."

Without in any way attempting to persuade this committee as to what judgement it should arrive at on that issue, it is quite clear that the issue revolves solely around the conduct of Ellis-Don and in no way touches Canada Square or any of its principals or officers.

The person who complained was Donald Smith, the President of Ellis-Don, who seems to have thought that since he attempted without success to use his political connections to get the job, it follows as a matter of course that the successful bidder must have used the same tactics with better placed political figures.

At the conclusion of the hearing, the evidence discloses that Donald Smith made the complaint; he called upon John Cronyn, a director of his company, to carry it forward; he encouraged the Globe and Mail to keep the story alive by reporting the alleged "threat", and when he and others connected with Ellis-Don were called upon to testify as to their activities, they

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(Mr. Finlayson)

all went to considerable pains to conceal their attempts at the use of political patronage.

It is quite clear that the so-called "threat" which prompted the Premier to ask that this ~~committee~~ committee be formed was either a figment of Donald Smith's imagination or came from John Cronyn.

I only mention the above to make it clear that the issue which prompted the inquiry is entirely unrelated to Canada Square and its attempts to get the contract.

There is not a scintilla of evidence that Moog attempted to use his friendship with Premier Davis for an improper purpose. He relied on his own considerable abilities¹ and the accumulated experience of his resourceful and imaginative^v team of experts.

Having said all that, the fact remains that all of the circumstances surrounding the activities of Canada Square as the developer, and all of the circumstances surrounding Ontario Hydro as the owner, have been subjected to the most exhaustive scrutiny that any commercial contract has ever been exposed to.

I will confine myself to the scrutiny of Canada Square's activities because I was not present as counsel during the portion of the hearing which dealt with the ~~entire~~ evidence of Ontario Hydro ~~managers~~ commissioners and employees. The ~~entire~~ evidence that was developed reveals a number of salient features:

1. Canada Square evolved the concept that suited Hydro's requirements.
2. Canada Square demonstrated from the outset its willingness to assume all significant risks.
3. Canada Square has designed and is building the best possible building.

The first point: Canada Square evolved the concept that suited Hydro's requirements.

While it is entirely proper for this committee to inquire into the extent, if any, that Canada Square ~~has~~ had the "inside track" in bidding for this job, it is perhaps useful to realize that the difficulty, both real and psychological, that the other

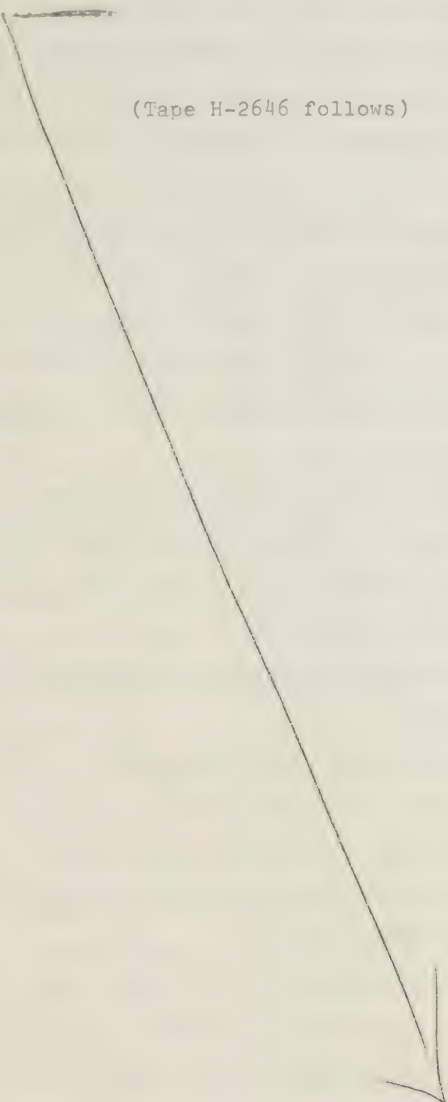
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(Mr. Finlayson)

developers were under, stems from the fact that it was Canada Square who had developed the concept of a lease-purchase with the OISE building, and this was a concept which, to that point in time, was unusual and is still undesirable to most developers.

The traditional concept of the developer had been to deal with a prime tenant whose ~~own~~ covenant on the lease would be used to finance the project, but at the end of the term of the lease,

(Tape H-2646 follows)



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10:20-10:25 pm
PLG

(Mr. Finlayson)

~~was the original intent, where covenant on the lease would be used to finance the project, but at the end of the term of the lease~~
ownership of the land and building remained with the developer.

The profit to the developer was largely in the residual value of ~~land and building~~ *of the*

The concept that the tenant was to obtain a conveyance of the property at the end of a term for a nominal price ~~was~~ was a concept which was attractive to Ontario Hydro. In the first place, it already owned the land and wished to develop it in conjunction with its engineering building and parking garage. It did not wish to raise its own funds in the capital market because of its projected borrowings for needed generation for its growing energy market.

The Canada Square concept allowed Hydro to develop its own land, to avoid its own bond issue, to have the use and enjoyment of the building at a rental that was less per square foot than it was already paying, and to end up with land and building in 30 years' time that was unencumbered and yet still had a useful life of another 30 years.

Canada Square was the innovator. Its competitors were forced to bend their traditional methods to match a concept they have little enthusiasm for. To this extent it can be said that they were always bidding against Canada Square.

2. Canada Square demonstrated from the outset its willingness to assume all significant risks.

Canada Square's philosophy was expressed in Moog's evidence; "If all obstacles first have to be overcome, nothing will ever be accomplished." This way of thinking and acting coupled with past results and ingenious ~~approach~~ approaches in financing, construction and management, soon impressed ~~Sam~~ Candy.

This positive and aggressive behaviour in conjunction with inventive patents, creativity, and complete immersion in one single project at a time--the creation of a piece of art, rather than a mass-produced product--was exactly what Hydro needed and wanted.

This same positive and aggressive behaviour also contributed

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PLG

(Mr. Finlayson)

to some confusion in the evidence when Candy's memoranda as to discussions with Moog were compared with the facts that existed at the time in question. These fall into two areas:

A) Financing

Mr. Moog had assured Candy from the outset that the risk of obtaining financing at a reasonable rate was entirely his. He insisted that he had the connections and resources to accomplish this, and in order to maintain his credibility with Candy, he told about his methods with respect to other projects and speculated as to his possible methods concerning this one.

He asserted that he could get money in Switzerland. He asserted that he could get it in the United States. He explained how he could use a combination of both sources. In fact he did explore all the markets that he speculated about and even suggested to the Equitable a combination of Swiss and American money.

In the end he succeeded in what he set out to do and obtained a firm commitment from the Prudential on ~~August~~ December 12, 1972 to get the money at eight per cent.

At least one member of this committee has expressed the thought that he could accept an overstatement by a salesman in attempting to obtain a job, but in the last analysis he would expect him to be accurate before the contract was signed. In assessing this remark the committee should consider the following facts:

- i) Candy was an architect, not a financial man, and Moog at no time on ~~anyone's~~ anyone's evidence specified the precise source of his funds.
- ii) When Moog was negotiating with Houser and McCallum, he ~~was~~ refused point blank to tell them his source of funds, despite being pressed to do so.
- iii) Hydro was content to have Candy act as the intermediary in all but the very latest stages of negotiations, and one can only assume that were they really interested in knowing details of Canada Square's proposed financing, they would have sent one of their own financial men, such as Milan

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(Mr. Finlayson)


Mustich, to discuss the matter with him.

- iv) In fact Hydro was content to make its own internal analysis as to what Canada Square's cost of financing would be and concluded from its own sources that it would be impossible for him to get it at less than eight per cent.
- v) McCallum stated flatly that he never believed that Moog had Swiss money available to him.
- vi) Even at the very end, the advisers which Hydro retained, namely McCallum and Houser, were convinced that he could not even get it for as little as eight per cent and certainly not over a 30-year term at a fixed interest rate.

Hydro was prepared to leave this risk--the largest single risk--to Canada Square. The contract allowed Moog only a spread of eight per cent to 8-3/8 per cent for his financing, but Moog had one thing in his favour, his overriding confidence that, given the contract, he would produce the financing.

b) The \$34 Question

Mr. McCallum introduced the one sour note into the relationship between Moog and Candy. He said that he was convinced that Moog has "welshed" on his ~~word~~ word to Candy that the building would be valued at cost and not at appraised value when completed. Mr. McCallum has described himself as a sore loser and his remarks plus gratuitous comments on Moog's evidence



Tape H 2647 follows

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D.L.

H 2647-1

(Mr. Finlayson)

~~CONFIDENTIAL NOT AT ALL DISCLOSED INFORMATION COMPLETED BY Mr. McCallum~~
~~CONFIDENTIAL NOT AT ALL DISCLOSED INFORMATION COMPLETED BY Mr. McCallum~~
~~CONFIDENTIAL NOT AT ALL DISCLOSED INFORMATION COMPLETED BY Mr. McCallum~~
~~CONFIDENTIAL NOT AT ALL DISCLOSED INFORMATION COMPLETED BY Mr. McCallum~~
reflect that he is still irritated that the formidable team of Houser and McCallum were unable to outnegotiate the Canada Square team.

It would be simple to dismiss this issue by pointing out that whatever the discussion between Candy and Moor was, there was no doubt in anybody's mind when the Commissioners were asked to approve the execution of a contract that,

- (i) Cost was not the criterion
- (ii) McCallum at least contended that Moor had "welsned" on a prior commitment to Candy.

I am not content to leave it at that, complete answer though it is. Mr. Moor testified that he had repeatedly assured Candy that he would get the best value for his money. He also stated that during a meeting on July 18 that he was prepared to agree to a criterion of cost in accordance with a formula which was to be worked out after the Commissioners' meeting on July 19 to consider the selection of the developer. Mr. Coles corroborates this and points out that the proposition had been put to Candy that if Canada Square was to proceed on the basis of cost, what provision was Hydro prepared to offer as relief to Canada Square if the cost was to exceed the \$34, figure. Candy was very clear that he wanted protection against the cost being less than \$34, but was not prepared to offer relief in the event that it went over \$34. For this reason Moor and Coles stated that if the formula was to be cost,

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(Mr. Finlayson)

Canada Square would have to retain some "elbow room" in the costing. As examples of this "elbow room", Coles cited a suggestion that the cost be determined on a net usable, rather than on a ~~gross~~ gross, basis, and later the letter of Aug. 24 (Exhibit 209) setting out an extended definition of cost that was sent by Mr. Bradshaw to Mr. McCallum on the strength of instructions from Moog as referred to in the July 13 memo (Exhibit 211).

Mr. McCallum rejected the Aug. 24 formula out of hand, and he and Houser attempted to extract from Canada Square a commitment to open its books to audit to determine the cost. It is respectfully submitted that there was no breach of faith on the part of Moog in insisting that he needed to be protected against rising construction costs and interest rates during construction, and the decision to go with "appraised value" is a sensible compromise which in no way offends the spirit of the position clearly stated by Moog to Candy.

The Committee must never lose sight of the fact that as early as July 18, 1972, Canada Square was prepared to state firmly that it would build a building at the \$34₀ figure and rent it to Hydro for \$4.92 per square foot. This is the essence of the commitment that was made at a time when:

1. It was not known when construction would start.
2. There were no contracts for construction negotiated.
3. The source of financing, the amount required and the rate were unknown.
4. Canada Square had no commitment that it would obtain permanent financing at a fixed rate over the 30-year term

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D.L.

L 2647-3

(Mr. Finlayson)

of the lease, which ~~was~~ meant that the rental rate agreed upon would not reflect the fact that Canada Square might have to pay an indeterminate increased interest rate at some point down the line.

No other developer made such a commitment at that time. Only a company and a man with supreme confidence in themselves could have gone so far out on a limb.

3. Canada Square has designed and is building the best possible building.

There has been one phrase which has been probably over-worked in this hearing and that is "the concept of value" which has been brought up repeatedly with respect to this proposed building. On the one hand it has been used in the sense of quality vs. luxury in-so-far as the building itself is concerned, and ~~and~~ on the other it has been used as worth vs. cost in the interpretation of the agreement as it relates to the \$34. figure.

When Mr. Moog used the expression "concept of value" he was thinking in terms of the creation of an entity which would be an ongoing asset to Ontario Hydro. He was not thinking solely in terms of capital outlay.

You will recall that Mr. Candy pointed out that there were developers in the usual sense of the word who were speculators, but at the other end of the scale there were contractors who were custom builders. He places a developer such as Canada Square in the range which is closest to the custom builder. This is a very valid analogy.

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(Mr. Finlayson)

Canada Square got this job because of the OISE building and because of the Chiropractors' College and because of the Transamerica Building and others which have been referred to in Mr. Moog's opening statement. Each one of these projects carries his signature and it was on the basis of this past performance that Candy was persuaded that this was the developer who could create the value which he wanted for Ontario Hydro.

(Tape 2648 follows)

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10.30 - 10.35 a.m.
M.R.

(Mr. Finlayson)

~~...Candy was persuaded that this was the developer who could create the value which he wanted for Ontario Hydro.~~

For myself, I had never heard of Gerhard Moog or of Canada Square before the newspaper talk developed with respect to this Hydro building. Neither Moog nor Canada Square had ever made any attempt to advertise. Moog himself in the words of a public relations man, "was his own man." Newspaper men such as Alastair Dow were unable to find out anything about him. His only source of advertising has always been the product that he creates.

When Moog assured Candy that he would build him the best building that his rental could buy, he put his own reputation at risk. With this inquiry and its attendant publicity he has still insisted and continues to insist that he will honour that commitment. His reputation is in that building now, more than it ever was.

Everyone appears to be satisfied that by virtue of inflation in building costs and particularly because of runaway interest rates, there is no question that Hydro will have a building in 1975 which is worth considerably more than \$45 million, whether it is valued on a straight cost basis or on a market value basis. The point is that it could have very readily gone the other way. In a period of deflation Canada Square could very easily put more dollars into the building than it would be worth on completion.

When Mr. Moog speaks of providing value, he distinguishes that term from cost. He gives as examples of costs expended and not reflected in value, the delays occasioned by strikes, the installation of equipment with an early obsolescence, and the redoing of work in order to accommodate changes at the insistence of the owner. The cost in this case will undoubtedly exceed \$45 million and may even, for the reasons expressed above, exceed the value of the building.

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M.R.

(Mr. Finlayson)

There are other elements of value which have not been emphasized in the rental. There is an allowance of \$1.45 for maintenance, with escalation geared to a base year of 1976, being six months after the anticipated commencement of the lease. We have heard from the president of Horizon that if he were bidding on a job in 1973, his figure for maintenance would be \$1.60, as opposed to the \$1.40 which he bid for the base year of 1971. This means that Hydro will be receiving the standard of maintenance which Robert Tambllyn praised for a price which will be considerably less than its real value in 1975.

Another element of value which should be emphasized is that Canada Square was the only bidder which was prepared to get behind the proposed commercial areas in the building with any enthusiasm. It will be installing very extensive commercial areas completely at its own risk and upon which it can only realize a profit if they are fully developed.

Much is said about the value ~~which xxxxx~~ of the Hydro covenant which is undoubted, but Canada Square must find the tenants for the commercial area, and if at any time during the next 30 years there is any fall-off in business activity, it will be Canada Square which will suffer the consequences with respect to the commercial area. *And my conclusion, Mr. Chairman.*

My client, Canada Square, and particularly its principal, Gerhard Moog, has been subjected to a barrage of media publicity, which they had always shunned, ever since this matter was raised in the Legislature. In addition to that, Mr. Moog has borne the brunt of most of this hearing which has been carried on almost continuously over the last four months.

I have complained about the overzealous questioning of counsel for the committee, who has persisted in publicly trying on for size one theory after another, with the explanation

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that it is necessary so to do in order to probe the issues and test the credibility of the witnesses. No person has been subjected to more of this than Gerhard Moog and no person has resisted so successfully all attempts to shake his evidence. He has been fully vindicated and I submit is entitled as a right to have this committee state that fact in unqualified terms.

We have heard a great deal about how we do not want this hearing to appear to be a "white-wash," and partly because of that fear, the hearings have dragged on to the point where some of us present felt that the committee almost had to find a scapegoat before the hearings could come to an end. If you as a committee feel that any individual who has come before this committee is worthy of censure, then it is your duty to censure him. Similarly, if you feel that any individual, whose conduct has been questioned, has been vindicated, then it is your duty to publicly say so.

Whatever you do, you must never allow fear of the media to compromise what the evidence has told you is the truth. There must be no concessions to critics of Moog who would like to see his knuckles publicly wrapped in order to vindicate them in the attacks that they have made upon him. The evidence does not sustain such an attack. It overwhelmingly reputiates it. In simple honesty and justice to Mr. Moog, you should publicly clear his name.

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(Mr. Finlayson)

~~Sustain and an attack. It overwhelmingly repudiates it.~~
~~In state honesty and justice to Mr. Genest you should publicly~~
~~admit it.~~

Now, Mr. Chairman, just to supplement that, I want to say something very briefly about the Anson-Cartwright Report, and I am being very brief because I had the opportunity over the week end of seeing what Mr. Genest is going to say in more detail on it and I don't want to repeat what he will say. I associate myself in advance with it, but on behalf of my client I particularly complain about the headline-grabbing reference to a possible \$17.5 million profit over 30 years accruing to Canada Square which I cannot allow to go unchallenged.

First the logic of the suggestion is fallacious or, at best, speculative; a discredit to the expert witness, Mr. Ronald Anson-Cartwright, and a disservice to his respected firm of Price Waterhouse, and worse, a near libel or half-truth.

However, it still becomes valid evidence that floats to the top of every newspaper story casting aspersions on the reputation of my client. That testimony is an example of the material that Canada Square has been trying to counter ever since this hearing began. It has always been the startling and outrageous testimony that surfaces as headlines and opening paragraphs in newspaper stories to remain in the public memory. The balancing qualification or counterargument is left to the forgettable gray columns of the inside pages. That is the nature of news reporting but it shouldn't be the stuff that court or committee decisions are made of, and Mr. Genest will be giving an analogy to illustrate the weakness in Mr. Anson-Cartwright's argument.

I ask you to apply his thinking. If anyone earned \$20,000 per annum and reinvested over 30 years that amount, his salary in effect would be \$70,000. This method of fact-^{twisting} ~~twisting~~ was admitted by Mr. Anson-Cartwright in his preliminary report

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(Mr. Finlayson)

and was very conveniently left out of the final report for obvious reasons. It is spurious and unworthy of the committee to pay any attention to that.

Now before relinquishing this microphone to my colleague, Mr. Genest, Mr. Chairman, this has been a very lengthy hearing and tempers have frequently flared, mine among them. I came to this hearing in early July when I was asked to take it over from my partner, and it was long after the hearings had commenced.

Quite frankly, when I arrived here I felt like a man who was attempting to walk into a building and the ~~wood~~ doors kept swinging the other way.

I regret that in order to make my presence felt that my conduct at times became abrasive and at other times I will admit, it was outright abusive. I regret this conduct. I can assure you that in what I did and what I said I ~~was~~ was concerned only with the best interests of my client, which I felt when I arrived here were not being adequately protected. I want to make it clear that that was the only motive that I had, that neither I nor my client, Gerhard Moog, had any intention of obstructing the work of the committee, and I, for my own part, feel that had I been with this committee from the very outset, I would have established a rapport with you gentlemen which would have made it unnecessary for us to have had the confrontations that we did.

Now my client, Mr. Moog, has expressly authorized me to join with him in saying that so far as any suggestion that we were attempting to obstruct the work of the committee, it is not so. I was only concerned for him and he was concerned for himself. I am satisfied now, having had the opportunity of being here for some time, that each and every one of you gentlemen has, in accordance with his own background and his own experience, been doing your very best to carry out the duties which the Legislature

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(Mr. Finlayson)

has imposed upon you, that you have all been proceeding with the best intentions and the best of faith, and after all, that is the only basis upon which any tribunal should be ~~be~~ judged.

So far as the precise blow-up that took place before the last recess, I have to take full responsibility for that.

~~I was the one who told my client not to come forward and testify.~~
~~and~~

Tape H - 2650 follows

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fvk

(Mr. Finlayson)

_____ I was the one who told my client not to come forward and testify and he didn't do so because he was acting on my advice.

I was very disturbed at that time and we were all a little frustrated and angry, and I was particularly so, because I didn't feel that I was making the ~~right~~ points that I should have been making. I made an argument at that time as to why we should have adjourned then if we were going to adjourn at all but my argument was not effective because the Chairman didn't accept it. The fact is, that once he had made a ruling then it was my duty to obey him. I've been in this profession for a long time and I realize that your arguments are not always effective and it's my duty, as a member of this profession, to assist tribunals such as this in getting on with the business of the day and, while I'm entitled to make arguments; while I'm entitled to vigorously defend my client's rights, I have a duty, not only to him, but to the tribunal before whom I appear. I can see that, in that instance, that I fell below that duty and I regret that and I ask you gentlemen to keep that in mind in your deliberation. Thank you.

Mr. Chairman: Thank you very much, Mr. Finlayson. First of all, let me thank you for your apology on your own behalf and on behalf of Mr. Moog to this committee. I know the committee is glad to receive it and that's all I'll say on that matter at the present time.

Your summation has been brief. We're grateful for it. We're grateful for the fact that it has been put in writing because I'm sure it will be most helpful to us when we are considering our report in the next few days. ~~It's~~ It's been well put and, again, ~~thank~~ thank you for a ~~good~~ good brief well presented.

Now, Mr. Genest.

Mr. Genest: Mr. Chairman, I've also prepared ~~a~~ a written statement which I would like to ask ~~the~~ to be distributed.

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(Mr. Genest)

It's a little longer than Mr. Finlayson's because I think I have more areas to cover and I would ask the members not to race ahead of me because I reserve the full liberty to depart from my text and to amplify on it. I would also like to say that if anything I'm saying is not understood, or is troubling members of the committee, I don't mind interruptions or questions. In fact, sometimes they're ~~help~~ helpful because what I want to do is make my points and I'm not going to make them if they're not understood. leafing

Mr. Chairman: I'm just ~~leaving~~ it over, Mr. Genest.

Do you think you'll need a recess in the middle of it?

Mr. Genest: Mr. Chairman, at two pages a minute, you'll be an hour. You had ~~48~~ 49 days, give me an hour.

Mr. Chairman: I'm suggesting it for your own discretion and not in any way to be critical.

Mr. Genest: If I get dry, or if my voice fails, I'll let you know.

Mr. Chairman: If your voice is dry, or we think you're dry, you call the recess in the first case and I'll call it in the second.

Mr. Genest: Thank you, Mr. Chairman.

As Mr. Finlayson has said, and as many members of this committee have stated, the Select Committee would not have been established were it not for the allegations of political patronage and threats from political sources. These allegations represent a grave attack, not only on the government, but upon the integrity, and that's what concerns us, integrity of Ontario Hydro and its senior staff, who are all men of unquestioned integrity who have ~~devoted~~ devoted the major portion of their lifetime to the service of the people of this province and, in so doing, ^{have} established unblemished reputations.

It is therefore the answer to question number four, the political patronage question, that most vitally affects Hydro in these proceedings, because ^{if} it is not answered with a clear "no", if lingering doubts are left, the damage to Hydro ^{will} ~~have~~ have been

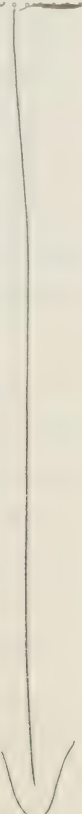
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(Mr. Genest)

irreparable. I can't over-emphasize this, that nothing is more important to Hydro than ^{that} it should retain the high degree of public confidence in its integrity which it has heretofore ~~and~~ enjoyed.

Notwithstanding the importance of the question, I don't propose to spend too much time on it before this committee because, in my submission, the exhaustive and painstaking investigation that is conducted, which has been described as "lifting every rock that you encountered" during the long course of these proceedings, in my submission, has not ~~uncovered~~ uncovered one ~~the~~ iota of evidence that would justify the least inference that political patronage had anything to do with the awarding of this contract.

In particular, it's my submission that it's clear from the evidence that the friendship of Premier Davis and Mr. Moog was, at no time, a factor ^{of} ~~in~~ any weight whatsoever and did not.



(Tape H-2651 follows)

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(Mr. Genest)

my submission that its clear from the evidence that the friendship of Premier Davis and Mr. Moog was at no time a factor ~~of any weight whatsoever and did not~~ influence any decision whatsoever of Ontario Hydro.

On the evidence, it is my submission to this Committee that its clear duty is to declare, in unmistakable terms, that Hydro and its staff were not affected by any consideration other than what was in the best interests of the people of Ontario, ~~was~~ to use ~~proper~~ the wording of ~~the~~ question. You may be critical of Hydro in other respects, but I submit that on this issue ~~it~~ it is ~~ess~~ essential that Hydro be given a clean bill of health, ~~a~~ complete exoneration. It is essential that your report be crystal clear on this aspect, because any shadow will cause ~~the~~ ~~own~~ damage caused by that will last for years.

I am going to deal briefly with the question of the threat. The only thing I have to say to that is that Hydro is not in any way involved in it. I don't think it is my function. I think the evidence is quite clear that there is absolutely no Hydro involvement in that aspect of your inquiry. Perhaps it is gratuitous, if I can depart from my text at this time, I perhaps shouldn't comment, but the committee may find some help in what I have to say.

Mr. Renwick, I think, summed up the dilemma of the committee as to this aspect of the inquiry. He said: "Either Mr. Cronyn made it, or Mr. Smith used ~~a~~ it to excite interest in the story, ^{and} ~~it~~ ^{it} was a figment of his ~~a~~ imagination." Having heard Mr. Smith's evidence my own inclination would be to say that it was the product of the imagination. I don't think anyone will challenge the accuracy of the press reports on the matter, corroborated as they are by a contemporaneous memorandum, ^{But} having seen what Mr. Smith ~~has~~ done to everything he has touched, it is to me ^{the} ~~a~~ most probable solution that he made it up to give a little ~~own~~ drama to his story. That is really all I want to say on that point.

Again dealing with a ~~specific~~ question over which I don't think there is as much controversy at this stage, and that is the issue

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***** (Mr. Genest)

***** of the plans, and that loomed fairly large at the ^{\$1.5 million?} beginning of these things. Why would Hydro write off ~~the plans~~?

I think the evidence adduced has clearly shown Hydro's decision to ~~scrap~~ the plans ~~scrap~~ was unquestionably the right decision.

May I just review the evidence. I refer here to Mr. Candy's evidence at page 375-1 that the improved space utilization of the new design, all by itself, represented an additional rentable value of \$357,000 per year, and that will ~~again~~ quickly recapture the cost written off in scrapping ~~the~~ the old plans in a very short period of time.

It is clear that by 1971 the plans prepared on the basis of needs evaluated around 1967 were badly out of date. Staff estimates had increased with the nuclear generation programme; The first building was not suitable for the open landscape concept which had evolved ~~a~~ a good deal since the plans for the original building had been conceived; The first building was a two-stage ~~xxxx~~ concept, the second stage ^{requirement} of which had already been reached; The first building made much less economic use of the land space available; The first plans, which allowed for ~~a~~ incorporation of Hydro's computer facility in the new head office building, were rendered ~~as~~ obsolete in that respect because the computer facility ~~was~~ became installed in another building ^{and} It wasn't intended to incorporate it into the new head office building.

Lastly I say, and when I say that perhaps one should not inject personal taste in these matters, and I am asking the architect, Mr. Adamson to forgive me for the comment, I detected amongst members of this committee a feeling which I share, that the design of the Canada Square building is much more appealing than that of the first building.

In summary, it is my submission ^{of} the evidence shows that Hydro's decision was the only sensible decision and I think I am right in believing that this does not remain as a matter of much controversy among the members of this committee.

I'd like to ~~go~~ move on now to the 5th question, the question of government relationship, and I think it is important to have

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(Mr. Genest)

the text of this ~~question~~ question in mind: Was the agreement of a nature of such importance that Ontario Hydro should have submitted it for consideration on a ~~a~~ policy basis to the minister of reporting to Hydro? ~~Let us find out if all that is~~
No doubt

Tape H 2652 follows

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(Mr. Genest)

~~Let me first of all point out that there is no doubt whatsoever as to the legal position. Under the law of this province, the Legislature has clearly entrusted Hydro with the power to make the decision to build a head office building with reference to the cabinet or government. And I quote here Section 38 of the Power Commission Act which I think makes it clear beyond any doubt.~~

Let me first of all point out that there is no doubt whatsoever as to the legal position. Under the law of this province, the Legislature has clearly entrusted Hydro with the power to make the decision to build a head office building with reference to the cabinet or government. And I quote here Section 38 of the Power Commission Act which I think makes it clear beyond any doubt.

To put in another way, it was not the intention of the Legislature of this province that Hydro should refer the question of whether it should erect a head office and the method ~~by~~ it should use to erect such a head office to the cabinet.

Now both Premier Davis and his predecessor Premier Robarts have taken the position that Hydro possessed the authority to proceed with a new head office building without reference to the provincial government. I quote here what Mr. Robarts said to the Legislature on November 21st, 1968: -

"No sanction of this government is necessary for Hydro to proceed."

Mr. Davis also reaffirmed this position in the Legislature earlier this year when he said: -

"The question of a new facility for Hydro really was never dealt with by the cabinet. It is not a matter of cabinet decision - the government knew that Ontario Hydro was going to develop a building on that site. The question of who was to do it, the terms of it were matters entirely within the purview of the Ontario Hydro-Electric Power Commission."

We recognize that while the law has already answered question five as it is asked, the question does have wider import and entails an inquiry into the broad relationship between Hydro and the government.

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(Mr. Genest)

The point I wish to make on behalf of Hydro is that from the beginning we followed procedures which are accepted and understood by Hydro and government.

The position of Hydro in this matter has been supported by government witnesses. In his testimony before the committee on July 23, 1973, (page 1342-2) Mr. Davis said; *and* ~~"I am referring to the conversation"~~ he was referring here to the Pickering conversation:- "If I had been the chairman of Hydro ... on the basis of conversation of February at Pickering, I would have said that the government is not going to say no to the development of our head office. I think that would be a fair position for the chairman of Ontario Hydro to take."

As to the question of whether the agreement itself should have been submitted to the government for consideration on a policy basis, Mr. Davis stated his own view that this would have been both unnecessary and impossible (Page 1335-1) and that's in evidence before this committee. He said:

"I would say, with respect to asking cabinet to make a decision on the basis of the proposals, etc., would have been quite impossible."

Later, he added (page 1348-3):

"I don't think there was any way that cabinet would have had the capacity to make that decision."

The position of Hydro and government as to authority and responsibility are clear from the testimony. What is not so clear is the broader definition of the government-Hydro relationship. Both Mr. McKeough and the Premier intimated that even after the exhaustive studies of Task Force Hydro, the relationship is not totally definitive. In my submission, this lack of precise definition is not necessarily a disadvantage. Premier Davis noted that while there are problems in the relationship, "You would still have to go a long way to find a better public utility."

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(Mr. Genest)

In summary, the testimony of Hydro and government officials support the contention that the position of both was entirely consistent with the practices and procedures followed as part of the ongoing relationship.

Now, let me add just one word here, Mr. Chairman, perhaps what happened in this case is more of historical than present interest, because since these events you have the reports the Task Force Hydro, you've had I think a significant change in the relationship between the Hydro and the government, and if you are going to enter into this field I merely suggest that you should have a good look at the Task Force Hydro recommendations, some of which are starting to be implemented.

I should tell the committee that the implementation of other recommendations has^s been held up by this investigation. We haven't had time.

That concludes my submissions on that aspect of the matter. I want to deal now, Mr. Chairman, with broadly question three which is the competition and ~~there~~ there's a lot of things that I'm going to say ~~here~~ here that may not be strictly be related to that but it's convenient to lump them all in a group.

And I want to deal first with the question of whether it was wise to go the lease-purchase route as opposed to self-financing. That may have something to do with whether it was a good deal or not but it's convenient^I to deal with it here.

Now, it's my submission that the testimony before this committee clearly demonstrates that the decision of Hydro to acquire head office facilities by the lease-purchase route was the correct decision and was strictly in keeping with broad government financial policy which was made clear to Hydro in

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D.L.

(Mr. Genest)

this way; we'll only take 10% of our total portfolio in Ontario or Hydro bonds"and if you got more available than these people are willing to take you create a real problem. First in liquidity, because if you want to get rid of them everybody's portfolio is already stuffed with them and they don't want to buy them from you and the market price drops. Secondly, you have trouble selling them and you have to make the deal more attractive, which affects your interest rates. So I say that any addition to the total outstanding of these bonds contributes to the problem and the Province and Hydro were undoubtedly right in recognizing that relief, even to the extent of \$50, million, and we've had the comment that that's not very much in the total picture. But Mr. Nastich said to you that \$50, million is half ~~the~~ a bond issue and he says that even relief to this extent is significant. And I say here you can't say, "What's \$50. million?" As C. B. Howe once said, ~~in~~ "In less inflationary times".

Now equally important to Hydro was the question of timing. May I ask members of the Committee to consider seriously when they are judging this whole picture because this is basic. Consider their position in 1971: Over \$1.5 million (and that doesn't count the time of the Hydro people who are involved in this process) had been expended in drawing up the plans for a building in respect ~~to~~ of which tenders were ready to be called in 1969. The process had taken some three years. The project had been stopped, not because Hydro's need for a head office was not justified, but because of general economic conditions. And I should add

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(Mr. Genest)

~~the statement in regard to the government financial~~
~~policy statement have clear to Hydro in unmistakable terms~~
on several occasions.

Both Mr. MacNaughton and Mr. McKeough, who occupied the position of Provincial Treasurer, had informed Hydro that it was government policy that every avenue should be explored which would relieve the strain which it was anticipated both the Province and Hydro would place on the capital markets in the years ahead.

It should be pointed out that the question of whether the obligations undertaken by Hydro are disclosed on a financial statement or not are totally irrelevant to this question. It's not whether the credit is affected by showing an extra obligation. The real question, and Mr. Nastich made this quite clear and I think the Committee will recognize Mr. Nastich's qualifications to comment and give evidence on conditions and financial markets. I say that because the only departure from this evidence is that there have been some comments by Mr. Anson-Cartwright and if you're looking at people who are qualified to make statements of that kind my respectful submission is that Mr. Nastich's qualifications are vastly superior. The real question is one of oversupply of Hydro or provincial bonds. There is a limit to the amount of Hydro or provincial bonds which investors will wish to carry in their portfolios. What I mean by that, Mr. Chairman, members of the Committee, is that portfolio managers of large institutions say, "Well we'll divide up our portfolio

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D.L.

(Mr. Genest)

because government policy then was not to contribute to the pressures on the economy to hold back. Now this *was part of* Hydro's problems—its staff scatter costs, and you ~~will~~ would think their exhibits could document this very well, its administrative nightmares due to separation of staff ~~to~~ had continued and worsened, to the great detriment of the power users of Ontario. I pause here to ask the members to give this serious consideration. I think you have to pause to reflect the effect on an organization of having highly paid people ~~and~~ have to spend two hours a day on buses travelling back and forth from Bloor Street to their head office attending meetings. What a waste there is in that, and Hydro ^{is} ~~is~~ very conscious of these pressures, at that time.

(Tape 2654 follows)

H - 2654 - 1

(Mr. Genest)

~~There was a pause in the decision to build the head office in 1971.~~

In 1971, there was another factor; there was a pause in the inflationary cycle: interest rates were at reasonable levels. It was the judgment of Hydro, which I submit has been amply confirmed by subsequent events, that these pauses were temporary only and that significant delay in the decision to proceed with a head office would add millions to the cost of erecting it.

I think it is now generally conceded that for Hydro to have elected to proceed to build its own head office in the traditional manner, by having detailed plans and specifications drawn ~~up~~ up, and by going through the tender process, would have entailed a minimum delay of 18 months in the start of construction.

I pause here to say that the Hydro calculations at the time were nine months, and I think it is generally agreed, and I think Mr. Shibley has made the comment several times, that that is an impossibly optimistic prediction and when you look at the process that you have to plan an entirely new facility, all the people from Hydro have to have their input, you would have gotten the architects to draw detailed plans and specs and to call tender, you would have to sort of specify every nail that's going to go into the structure. The process would have taken a minimum of 18 months.

Mr. McCallum, in his evidence correctly said that this course would have been an unmitigated disaster for Hydro and it was conceived as ~~such~~ such by Hydro at the time. I ask the committee to give him credit for that. In fact every witness called before this committee who has been asked about the subject, with the possible exception of Mr. Anson-Cartwright, who, I submit, is not qualified to make this sort of judgment, has emphasized the savings in time and money accruing to Hydro by electing to go the developer route.

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(Mr. Genest)

I therefore contend, and I ask this committee to find, that Hydro was right in electing, in 1971, to reject the concept of a building self-designed and self-financed in favour of the developer-lease-purchase option.

I don't think there is one witness that we have heard really who has said that there were not substantial benefits in this new concept of dealing with developers with a proposition as a total package. I will have something more to say about that a little later on.

Now in this connection the only critic, I think, is Mr. Anson-Cartwright, who deals with the matter at pages 19 and 20 of his report. I submit that he fails entirely. There is not a word in his report about the delay factors involved in going the normal tender route with the very significant cost factors, both in inflation and in staff scatter costs, that this would have entailed. I think he refers to that by saying that there may have been - yes, he says that at page 19 - "there may have been other reasons for selecting the lease-purchase financing route of which I am not aware".

Well, he ought to have been aware of them. They appear in the Mink-Candy report, they appear scattered through the exhibits. He makes judgments also on page 20, which I think he confessed here - he called these personal views, about commercial operations and about tendering out maintenance, which I submit he is just not qualified to make. I suggest that Hydro would have made a mistake in trying to operate a commercial area. That is not its business. Hydro is in the business of producing and selling power, and it shouldn't distract itself by trying to operate a shopping mall.

Again, I question very seriously that when you get a maintenance rate that's included in a total development package, that you could go out on the street and say, "maintain my building

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(Mr. Genest)

and get this kind of rate". I suggest it is just not possible.

And so I ask you - that's the end of my comments on that choice. My submission is that it was undoubtedly the right choice.

I want to deal next with the question, which I know concerned this committee, of the advantage which Canada Square obtained in the competition. I have already referred to the situation in which Hydro found itself in 1971. They were anxious to proceed; the head office situation was critical. I think I have heard it said here that some of the Hydro officials wanted that head office so badly that they could taste it. That's not wrong; that's not a sentiment that's motivated by anything but what is best for Hydro. These men had been put off in what they wanted to do for three years. ~~They were having administrative~~
~~pleasures and I think the committee has not to appreciate the~~
~~significance in 1971~~

Tape H - 2755 follows

(Mr. Genest)

~~There are~~ They were having administrative nightmares and I think the committee has got to appreciate ~~the~~ the atmosphere in which they were operating when they came to deal with Canada Square and with the competing developers.

Now, in this situation, in walks Mr. Barry Brooks, quite casually, and says, "We've got a terrific deal at OISE" and that started it. You will recall that Mr. Brooks had high, indeed, extravagant praise for the deal OISE had made with Canada Square. You will recall there was a memo by Mr. Cameron, which sounds like a hymn, when he is quoting Mr. Barry Brooks on the qualities ~~of~~ of Mr. Moog and the way they were satisfied. Well that's got to ~~and~~ create an impression. Mr. Brooks is an official of a government department, and his views were that this was a terrific deal, and you have got to appreciate the impression that this would make on Hydro officials. This resulted in a decision by them to visit the OISE building and to seek out the author of that building, Mr. Moog, in order to discuss the feasibility of such a deal as applied to the Hydro head office.

Now I say that these circumstances alone gave Canada Square the advantage over any other developer, that it was going to be very hard to remove. It is evident that Canada Square aggressively exploited the opportunity to the fullest possible extent, and ~~that~~ they're in business, no one can fault them for that. The point I want to make is that through this process, Canada Square became the benchmark against which other developers would be judged. Unconsciously, but nevertheless effectively, it cast upon other developers the onus of showing that they were superior, demonstrably superior, to Canada Square, and that may be pretty tough.

Now Mr. Candy gave Canada Square a plans, a ~~big~~ great fuss-- I am departing from my text now, Mr. Chairman--great fuss was made about the plans that were handed over in August of 1971 to Canada Square, but I don't think I have heard a single developer come here and say that they thought that was a significant advantage, because Zwig said he had all the looks he wanted at those. I think Mr.

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(Mr. Genest)

Tatham said that. Even Mr. Smith, who was pretty exercised, said that really the fact that you had had the plans several months before wouldn't make any difference to him. I think that as an issue can be put aside with this one exception, that at the beginning of these hearings this cast some reflection on the integrity of Mr. Candy, and I hope that that will be cast aside, because you have heard Mr. Candy's testimony. They were anxious to exploit--they never heard of the lease-purchase deal. Mr. Candy brought these plans to Mr. Moog and said, "could we make a deal on the basis of this building?" and Mr. Moog said, "no" and really the building ~~was~~ has got very little to do with the first building, so I ask this committee to say that this giving of the plans is no reflection at all on Mr. Candy's integrity or judgment.

Now what happened after that of course is that Mr. Candy became very impressed with Canada Square. He remained impressed with them throughout the process. I say he shouldn't be condemned just for that. He had good ~~and~~ grounds on which to be impressed. The complete satisfaction of OISE was one; and the second is the undeniable fact that Mr. Moog is a superior builder. He builds quality buildings. Every building that he has built is a first-class building. The evidence of Mr. Tamblin, and I don't think he and Mr. Moog get along too well, but he was unstinting in his praise of the standard of quality in Mr. Moog's buildings, and that was evident to Candy, and I refer here to your little trip. You will have to come -- I am sure you will come to your own conclusions about the level of quality you have been able to observe.

Now Mr. Candy was ~~led~~ in his enthusiasm for Canada Square into extended consultations with them. He made design suggestions to them in the fall of 1971 and we admit, that is an opportunity that was not afforded to the other developers. We can't deny that these circumstances gave Canada Square an edge over its competitors. There are perhaps errors in judgment. Mr. Candy in his enthusiasm

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fvk

(Mr. Genest)

~~... Candy is the person~~ for Canada Square, deemed to regard them as a benchmark, talked to them a good deal more than he ever talked to any other developer. That's what gave Canada Square the advantage. If they were good people they could get an insight then, into the thinking of Hydro and get an edge and we don't deny it. Indeed, I think in the face of the ~~other~~ other, we couldn't deny that they had an advantage.

I ask the committee to find that this does not involve the integrity of Hydro officials and, in particular, Mr. Candy. Throughout, Mr. Candy was motivated by the need for getting on with his building before the economic cycle turned. He may have committed ^djudgmental errors but, I ask the committee very sincerely, and very seriously, to exonerate, clearly, Mr. Candy of any improper motivation in these respects.

I would like to turn now to the competition itself. I think it's clear that, by November 1971, Candy had held numerous conversations with Moog. His enthusiasm for the ability and competence of Canada Square had been imparted to other people in Hydro. I would like to deal with the much-discussed memorandum, exhibit 26, that's Mr. Sissons' note on logistics, what he described as a think-piece.

All of the oral evidence, including the evidence of its author, Mr. Sissons, indicates clearly that that memorandum did not represent the decision on the part of Hydro to proceed to negotiate a contract with a single developer without ~~the~~ calling for competitive proposals. If you remember, the subject was raised also, and I'm departing here again, in a general managers' meeting on November 22 and, as Mr. Shibley, I think, fairly said in the course of Mr. Gordon's evidence, "not enough attention was paid in the early consideration of the minutes of that meeting to a concluding statement that was made by Mr. Gordon ^{that's well} going with one developer is one alternative but we've got to explore all of them." I say to the members of this committee, there is some unfortunate phraseology in the memorandum of Mr. ~~Sissons~~ Sissons

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that could lead you, if you just read that, or the particular phrases, to find that something had already happened. But I think the evidence clearly indicates that those inferences aren't justified. I say that if the memorandum, if it's read in its entirety^t, clearly raises the subject as an alternative to be considered.

I think Mr. Sissons did say that in November 1971 he was so frustrated that he would have voted for that alternative. But, in no sense, does it represent any decision by any senior Hydro official to proceed without calling for competitive proposals. The evidence is clear that, on Mr. Sissons' memorandum being discussed within a day or so, Sissons' suggestion that Hydro ~~may~~ might consider the ~~idea~~ awarding of a contract to Canada Square Corporation without calling for ~~separate~~ competitive proposals was firmly¹ rejected, was shot down. There was evidence given that the memorandum was discussed with Mr. Gordon and Mr. Gathercole and the decision was made that we had to go ahead and get competitive proposals.

In the light of the evidence which has been adduced before this committee, Hydro recognizes that there were mistakes and errors of judgement committed^d both in the course of dealing with the competing developers and ~~in~~ in the selection process leading to the choice of Canada Square. We admit that, Mr. Chairman. The specifications shouldn't have been given orally, although I should say in defence of that, that they were later given in writing. No developer said that what was given in writing ~~was~~ is not what he was given orally. They all confirmed it.

I concede that the specifications could have been a little more detailed to enable a better judgement to be made on the kind of quality, on the kind of price, that was being offered. Some developers were not given sufficient time for the ~~elaboration~~ elaboration of their proposals. There was a failure to sufficiently follow up with each developer's proposal, to enable Hydro to fairly judge the respective submissions. The pro-rating method

(Mr. Genest)

employed to judge the relevant merits of each proposals was in some respects defective. Too much responsibility was placed upon the shoulders of Mr. Candy - and I want to emphasize this - whose judgement ~~was~~ at Hydro was very - it was and is still - very highly respected but ^{who} ~~should have been more help in the~~

(Tape H-2657 follows)

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M.R.

(Mr. Genest)

~~There is a lot of discussion about the fact that the Hydro~~
have been given more help in the execution and management of the process. This was a large project and we recognize now, with the benefit of hindsight, that he was left practically alone in the execution of the carrying out and I think that was a mistake. There should have been closer involvement by other people, by financial people, right from the start. A team concept should have been evolved which really didn't work very well in this case.

Now we recognize these shortcomings. Hydro as a corporate entity must accept responsibility for them, and this point here I consider very important. I hope that the committee doesn't consider that its function is to identify scapegoats or to immolate ^a ~~some~~ victims; I don't think it would be ~~fair~~ fair for it to do that. All the people at Hydro who were involved in the decision-making and the recommendation process have all got to take their share of the blame, and it's not fair to hang this thing on the head of Mr. Candy alone, or on the heads of the commissioners alone. This is a corporate responsibility. If there were shortcomings here, we accept them as a corporation.

Now while there were these shortcomings, and we heard a good deal about them in the course of this inquiry, I'd like you to pay some attention, ~~although~~, to the other side of the coin and this is what I'm doing on Page 14, These are some of the points that you should consider when you are making your ~~own~~ criticisms.

The first point I want to make is that Hydro was operating in a uncharted area; the developer approach to real estate development is a relatively new concept, employed by private business but quite new to the public sector. It was the unanimous view of all witnesses examined on the subject that there are great advantages to the developer method and that these should be available to the public sector.

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M.R.

(Mr. Genest)

The difficulty is in the method used to achieve this. It is necessary for any public organization not only to obtain the best deal, but to be able to demonstrate ^{that's} the problem in public life, to be able to demonstrate that you obtain the best deal, and that it gave an equal chance to those desiring to participate.

While it is easy to say with hindsight that Hydro should have realized its lack of expertise in this field and should have called in outside help, it is more difficult to identify what it is precisely that Hydro ought to have done.

The evidence of several witnesses indicates the difficulty of finding ^{outside experts,} experts in this field. And I was impressed with a statement by Mr. Renwick, which I quote here. He speculated that the trouble here is that Hydro might have fallen in between two stools in trying to adapt the tender method to the developer technique ^{when} the two maybe don't go together.

It's easy to sit in judgment on the basis of hindsight when procedures have been examined under a microscope, as they have during the four and a half months of this inquiry. It was not so easy to foresee the difficulties before the event. I ask the committee not to be too harsh in its judgment of Hydro on this score. I say that perhaps the greatest service that could be performed by this committee is to use the Hydro experience ^{to} learn from Hydro's errors, and set down some practical guidelines which could be followed by public bodies, so that the advantages of a developer method ^{of} proceeding could be enjoyed by these bodies without disturbing public confidence.

Myxxxxxxxxxxxx

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M.R.

(Mr. Genest)

In my submission it would be a great pity and a retrograde step if the public sector were to be forced back into the tender method and denied the benefits of the developer method as a result of this inquiry.

It's convenient here, Mr. Chairman, to deal with something that I haven't in my written text, and that is suggestions that have been made in the course of the inquiry that ~~yes~~ our negotiation procedures were faulty, and also the specific criticism made by Mr. Anson-Cartwright that we failed in our - we were not very competent because we ought to have negotiated with developers for their tax benefits. I reject both of those contentions. The essence of a competition, surely, and I think that's been supported by a number of witnesses, ~~is that you ask each man on the question of price to consider his own~~

H-2658 to follow

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PLG

(Mr. Genest)

~~survivor~~ and I think that has been supported by a number of witnesses, is that you ask each man on the question of price to consider his own position, which ~~is~~ includes his tax position, because tax position on capital cost allowance claims, and a variety of other aspects ~~is~~ peculiar to each developer. He has to consider his own and put forward his best price. That is what you are asking tenderers to do. You don't go, after you have called for tenders and chisel and negotiate with the low tenderer. You don't go and look at his cost. You don't say, "You have had quite a few ~~troubles~~ last year and you are going to get this money here tax-free because you can write it off and therefore we should get an even better price." That is not done. You assume that ~~it is~~ it is the competitive process that ~~is~~ brings you the benefit of a low tax rate or a peculiar tax position, because the developer presumably will reflect it in the price he is offering ~~because~~ when he knows he is competing with someone else. So I don't think, with great respect to Mr. Anson-Cartwright, that Hydro can be faulted for ~~not~~ having gone to Canada Square, after having judged all the competitors. ~~and~~ You have heard some developers say, "You give it your best shot in your bid." You know you are competing? I don't think Hydro can be faulted for having gone to negotiate on that aspect. They are entitled to assume that Canada Square has taken their tax position into account when submitting their prices. I add to that, of course, Mr. McCallum's very clear evidence that insofar as capital cost allowance is concerned, which is the main tax benefit, he was clearly of the opinion that they couldn't get it, so why negotiate for it? I just ask the committee to reject those criticisms, ~~because~~ ^{which} I don't accept, ~~there~~.

Another point I want to bring to the committee's attention is that while there are a lot of criticisms about Hydro and the evidence of Smith and Tatham, Mr. Zwig also came here and he is in the same position as these gentlemen. He is a disappointed developer. In fact, he came closer than any of them, because in

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(Mr. Genest)

the last analysis they boiled down the competition to a selection between Horizon and Canada Square, and it was his evidence that he obtained all the information he wanted. He had an estimator spend a day and a half at Hydro, ^{He} he received all the cooperation he required from Hydro officials. He thought that he had enough information on which to base an intelligent proposal. In short, he had no complaints about the treatment he received, so that when you are looking at Mr. Tatham's evidence, and I agree Mr. Tatham was a very impressive witness, I suggest, with great respect, that he over-impressed Mr. Shibley. After all, he is in a position of a competitor. You have got to take everybody's evidence in that position with a grain of salt, but bear in mind Mr. Zwig's evidence when you are considering that.

I want to deal ^{then} with the pro-rating method. Much criticism, including criticism by Mr. Anson-Cartwright, has been directed at that method. Now I ask ^{the} members of the committee to bear in mind it was never used as the exclusive criterion of selection and while we heard a lot of criticism from Mr. Bullbrook about the other criteria, ^a they had some validity. They had considerable validity. It was a mistake, I agree, to tell the developers that they shouldn't concentrate on producing elaborate designs, ~~and~~ while giving marks ^{to} to Canada Square for the design it produced, but bear in mind that both Horizon and Y and B properties submitted a concept of design. I say here "with their proposals" in my text, Mr. Chairman, That is not quite right. Horizon produced it, ~~it~~ It wasn't included in the Horizon proposal. But the evidence is clear that their idea was to erect two Traveler's type towers, entailing people going back and forth from one tower to the other. I say they ^{were} were good grounds for saying that in the light of that evidence, the design concept produced by Canada Square was imaginative and attractive. It is a ~~big~~ factor of some importance that Canada Square did in ~~fact~~ fact have the so-called -- I will never use that term after this inquiry -- "in-house capabilities" which Hydro considered important, and bear in mind Horizon, and I asked Mr. Zwig specifically,

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PLG

(Mr. Genest)

~~Horizon~~ Horizon use a separate general contractor, and ~~doesn't~~
engage itself in construction work. ~~I think Hydro was~~
~~Hydro~~ (entitled ~~to~~ to take
that into account in judging Horizon, because

Tape H 2569 follows

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11.25-11.30 a.m.
M.F.

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(Mr. Genest)

~~original intention. The intention was to have a reconstruction~~

~~was. I think that we are entitled to take that into account~~

~~to take into account~~ it imports more rigidity into the on-going process. The fact that you can erect a building without having detailed plans and specs, that is going to be a little tougher with a developer who has got to get a firm price contract from a contractor, and I say Hydro were entitled to take that into account and it is not a meaningless criterion, it is an important one.

Now, on Y and R, they were very doubtful about undertaking the risks inherent in the development of a commercial area in the building. Recall their proposal: It ~~was~~ said, "It won't work. We have tried it in ^{H.C.} Richmond-Adelaide Centre and everybody is going broke, and we are not very keen on that," and I ask the committee to ask themselves how easy would it have been to negotiate a deal with them where they took the risk that Canada Square is taking on that commercial area?

Now I say Hydro were justified in treating that as a matter of importance.

Another important thing is the policy of Canada Square to engage in only ^{one} project at a time and thus anybody who deals with them is assured of the exclusive attention of the developer's original efforts. ~~Because~~ I say that's very important, ^{and that} Canada Square, when you come down to the selection process, ~~and~~ here's a fellow who won't be engaged in any other project. Here's another chap who's got seven things going in town, and whenever you want to call him he won't be available. I say that that is an important criterion, and that it ~~it~~ shouldn't be discounted.

The loudest complainers have been Ellis-Don, ~~And~~ I say this frankly to the committee, ~~from~~ [✓] from the very beginning their qualifications to handle this total package were questionable. While they were competent general contractors, they had never handled

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(Mr. Genest)

a development package, including financing, design and maintenance. They went and got married to someone else who was going to do the maintenance whom they quickly divorced. They said they were going to go into the business themselves and as late as August - I found that a very, very strange piece of evidence from Mr. Smith - he said the reason he called Joe Barnicke was ^{to} find out if Joe Barnicke would ally himself with Ellis-Don to provide the maintenance, and Barnicke in evidence said that was the most ridiculous thing he had ever heard of. This was one of the people Hydro was judging in this contest. The proposal they submitted changed the approach - I mention^{ed} that - and Hydro were quite entitled to have concern about their overall qualifications, ~~and~~ ^T they were properly seen in this competition to be starting from pretty far back in this sense, that they would have had to offer a vastly superior deal to justify Hydro in going to them. I say, Mr. Chairman, thank God we didn't, because we would have been publicly beheaded.

Now Hydro didn't want to exclude them from the competition. You can imagine the howl you would have heard from Mr. Smith if that had occurred. But I don't think criticism should be addressed to Hydro. Mr. Sissons' handwritten note, for instance, on a letter of some kind, ^{"This} ~~is~~ ^{"This} is not their dish of tea," he was absolutely right. But on the other hand he shouldn't have told them "go away". He should have given them their chance to put their best foot forward, which they said they did. Now it's true they weren't given enough time to do it but let's consider that error in the light of all the circumstances. I don't think Hydro should be faulted too seriously for that.

I want to deal next with this \$34 question. There has been much criticism of Hydro, and particularly Mr. Candy, for using the value of \$34 per square foot as a quality benchmark. Mr. Candy made that quite clear. He was of the view that

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M.P.

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(Mr. Genest)

no matter what they said, in view of prevailing building prices, it would be necessary for a developer to spend \$34 per square foot to give Hydro the quality of building which it required 30 years from now. Now there are defects to this approach. As someone has pointed out it may eliminate the imagination or the ability of developers to use their imagination to give you quality for less cost, but there are substantial grounds on which to support a judgment of that kind. Mr. Candy quoted the Toronto Real Estate Board's index of building costs which indicates that ~~the index is~~

Tape H-2660 follows

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fvk

(Mr. Genest)

~~Mr. Candy would use Toronto Real Estate Board's index of building costs as a valid indicator that for a building expected to be completed in 1975, \$34.00 is a "quality" not a "prestige" level.~~ ^{has} their index, a building cost goes all the way up to beyond \$40.00 and I say that the inflationary trend of the economy ^{has} amply justified Mr. Candy's judgement, and has accentuated the risk that Canada Square have assumed. I ask you to bear in mind, also, Mr. Anson-Cartwright's evidence that once you accept this \$34.00 as a valid assumption—in other words, if you say you accept it, ~~no~~ developer can build what we need. There isn't that much variance. There are no give-aways in this business. Once you accept that then the pro-rating process makes a good deal of sense. Mr. Anson-Cartwright admitted that in examination by me, and he has never called it less than a useful tool. I ask you to bear that in mind when considering the criticism which will undoubtedly be brought to your attention.

My next point, Mr. Chairman, ^{has} ~~is~~ the mistakes and errors in judgement ^{to} which I have referred, have really come to light as a result of the close examination by this committee of the procedures employed by Hydro. I ask you to find ~~—~~ this is an important ~~and~~ point. ~~I want~~ submit that the evidence ~~as~~ shows that they were not evident to Hydro at the time that the decisions were being made. At the time the proposals were analysed, at the time the commission authorized negotiations with Canada Square, at the time the terms of the contract were finally settled with Canada Square, at the time that Hydro reported on this transaction to the House and to the Premier, Hydro believed sincerely that a proper competition had been held and that its ~~the~~ selection procedures ~~has~~ had been proper and, in fact, until this inquiry came along and Mr. Candy believed he had run a proper competition ~~conducted~~ proper evaluation. ^{It was} ~~only~~ when ^{you} sat back and saw all these things in their proper light that ^{you} he said: "Gee whiz, there were some mistakes." But I ask you to believe, ~~that~~ and to accept, that the commission didn't consciously as has been suggested, go out

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and run a sham to justify a choice already made.

I say, in retrospect, it's a great pity that ~~neither~~ neither Mr. Dillon, nor Mr. ~~Seguin~~ Seguin, saw fit to disclose the full extent of the Ellis-Don complaints at the time they received them, or that Mr. Smith himself did not write officially to the commission. I suppose that's in keeping with his method of operation which is never to use the direct approach. Had this been done, I'm confident that a thorough examination would have been launched by Hydro into the procedures used in conducting the competition and the errors would have been corrected.

Mr. Chairman, this is not a bad time for a break. I am getting a little dry.

Mr. Chairman: All right, if that's your opinion, we'll adjourn for 10 minutes.

The committee recessed briefly at 11:34 o'clock, ^{a.m.} ~~pm~~

(Tape H-2661 follows)

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M.R.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order and if you will proceed Mr. Genest.

Mr. Genest: Thank you, Mr. Chairman. I'm not²⁵ moving into the area of question one, the soundness of the deal, and the rest of my comments will be concentrated in that area, and I say in my submission it really boils down to, ⁴Is it a good deal? ¹⁷and I say there are three main components in this. There is the choice of the person you are going to deal with; the terms that you get from him; and the product that you get.

~~submitted~~ I have already dealt with the reasons that ~~Ontario Hydro~~ Ontario Hydro to select Canada Square. Mr. Finlayson has not unexpectedly extolled the merits of his client. I don't think there is anything I can usefully add to that. And I want to move into the terms of the contract.

There are some important general observations I want to make and they are trite but they are worth saying. There is no such thing on earth as the perfect deal. There is no deal that has ever been made that you can't improve with the benefit of hindsight. And there's a maxim, that I remind you of, that "the best is the enemy of the good"; that is, that the search for the best possible solution often results in no solution at all.

And another general observation is that a transaction of this kind must provide benefits to both sides, must be good for both parties, ~~otherwise~~ that's the essence of doing business. The function of this committee, I respectfully submit, is not to find out whether Hydro have obtained the best possible deal; it is to find whether the benefits to Hydro and the benefits to Canada Square are in fair balance, ^{and} ~~and~~ having regard to the risks inherent in the transaction.

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M.R

(Mr. Genest)

I detected really only two area of criticism and perhaps a third that I don't mention here. Let me deal with that third one now. I think the main areas are the rent reduction formula, ^{the} meaning of "appraised value" and ^{I've} ^{ten} forgot ^{ten} what the other one was but I'll come to it. But there is one that is not mentioned in here that I want to deal with very briefly, ^{the} ~~that~~ that's the performance bond question. I just don't think ~~it~~ it would be right for this committee to criticize Hydro for not having exacted a performance bond. It came up, ^{it} ~~it~~ was considered by Mr. McCallum and it was rejected in favour of this \$2 million approach; in favour of the requirement, which is very tight and which provides all the protection, ^I ~~I~~ submit, that Hydro needs in this thing, which is to say to Canada Square, ^{the} "first of all, before you start, you put away \$2 million; segregate it from your assets so that it's available for this. And when you do start, you don't borrow any money. You don't mortgage your ground lease to your interim financier, to the Bank of Montreal, until you've got \$2 million of your own money sunk in to that ground."

"Then you can't borrow, and the onus is on anybody ~~to the bank of Montreal~~ who is providing the interim financing, to show that every dollar they have lent you on the security of a mortgage of the ground lease has been spent in the ground." Now, I suggest that that provides every protection that is needed ~~for Canada Square~~. This is not the normal job where you are making progress payments to a contractor and the danger there of course is that he's using credit to put this stuff in to the ground and he's using the payments you are making to him to settle other debts. And that's the bind — and that's where performance bonds serve their real ~~purpose~~

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(Mr. Genest)

~~We are making it difficult to settle other debts, and that is~~
~~the performance bond is also their main function. Now the evidence~~
is that the performance bond would have been very costly, and I
question, ~~the~~ having regard to the very unusual nature of this
transaction, ~~whether~~ a bonding company would have bonded ^{it} at all, because
what is there to bond? Hydro spends no money, not a nickel, until
^{the} building is up and is ready to be moved into, so I say it is just
not a valid criticism of Hydro that they failed ~~to~~ to obtain a
performance bond in this situation.

Now let's go to the formula. There are two chief areas,
but the other one is of course the level of profits ^{on} which I want
to address considerable remarks. Let me deal first with formula:

It is important that the committee should appreciate the
circumstances under which the formula will operate. It will only
operate in the event that "appraised value" (and I will deal with
the meaning of this later) is less than \$34 per square foot.
When passing judgment on Hydro for having decided to accept this
phrase in lieu of one related to Canada Square's costs, I ask the
committee to have in mind the following: ~~the~~ first, there is strong
evidence that in all probability Canada Square's actual cost
of erecting the building will be equal to \$34 per square foot or
more. In that event, the formula does not operate at all. Remember
it was Candy's ~~own~~ view at the time the contract was entered into
that the level of quality he was entitled to acquire under the
contract would result in a cost exceeding \$34 per square foot. The
subsequent inflationary trends in the economy have amply borne out
this judgment. Mr. Candy is supported in these views by the survey
of the Toronto Real Estate Board. Clauses 6, 7, and 8 of the
agreement give very considerable discretion to Hydro to ensure that
the quality level of the buildings is maintained. It is true Mr.
Shibley was at great pains to point it out that the powers of
Hydro ~~to~~ to order changes in design or specifications are limited by
these words: "the intent and framework of the preliminary drawings
and specifications". Now, bear in mind that these are the words

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that governs and bear in mind that the preliminary drawings and specifications ~~are~~ are very broad. They are not detailed in any sense, except in matters -- they specify certain items, but elsewhere they are very broad specifications, and I say that is a very broad phrase which affords ~~a~~ considerable latitude to Hydro, ~~and~~ Secondly, and I want to make this clear to the committee, Hydro can assure you that the administration of this contract, will be hard nosed. It will make use of specialists in construction drawn from a consultant ~~field~~ field to ensure that we get value for the money. Perhaps I should tell the committee we have already started to get a team together.

I also ask the members of the committee to have clearly in mind the evidence of Rasmussen, Hanscomb and Roy. This independent expert has given as his latest estimate of the construction ~~a~~ costs of the building, the sum of approximately \$3⁷/₅ million, and if you add to this, which was a point that I made at the time he was giving evidence, and which was evidently lost by Mr. David Allen in particular, you ^{are} got a building worth \$44.5 million. Now I mention these matters to put in its proper context the attitude of the commission when it was advised that the appraised value formula was not equivalent to Mr. Mogg's costs. The commission was confident, and I suggest on substantial grounds, that as events would turn out, the formula would not have to be used because Canada Square's costs were almost certain to exceed \$30 per square foot.

Now I want to move on to the formula itself. Much confusion was caused at this hearing as to the meaning of the words "appraised value," and with great respect to Mr. Finlayson, I say that his client has contributed to the confusion. I say the confusion is not justified. You have got Mr. McCallum's very precise definition of the term, I am not going to repeat it, I have given you the definition, ~~and~~ Again I am getting into a legal submission here, but I think it is important that the committee should appreciate that that word has some fairly settled meaning.

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PLG

(Mr. Genest)

Our courts have for years been ^{considering} ~~dealing with~~ the words
"actual value" appearing in a municipal assessment statutes
and the terms have acquired settled meanings having regard to
the circumstances of the property being ~~appraised~~ assessed or
appraised. I give you a case citation -- I am sorry I have to go
that far--but I refer to a famous case, a leading ~~case~~ case in the
Privy Council, ~~the~~ the case of Montreal vs Sun Life Assurance
Company of Canada, and this was a case involving the assessment of
the Sun Life building in Montreal, the head office of Sun Life
~~Insurance~~ ^{Assurance} Company. The term used in the

Tape H 2663 follows

September 17, 1973
11:55 - 12:00 a.m.
D.L.

(Mr. Genest)

~~CONFIDENTIAL - SECURITY~~

~~CONFIDENTIAL - SECURITY~~

~~CONFIDENTIAL - SECURITY~~ Montreal statute was that the tax would be imposed on the "real value" of the building. All the courts agreed that term was equivalent to the term "actual value" as it appears in Ontario statutes. The judicial committee of the Privy Council found that because of the special purpose of the building, ~~which~~ which was intended to serve as the head office of a large financial institution, it was not appropriate to have reference to the market price, since there would be no real market for the property, and it's applicable here. The judicial committee also held that "there was no question of letting or the possibility of letting the premises, and therefore that aspect was ruled out." And I ask you to note here that the appraised value formula is used without reference. No one has even suggested that, without reference to any leasing value. They found that in the circumstances, replacement value of the building was the best means of ascertaining its actual value. I quote what they ~~said~~ said at page 94:

"The first question then which their Lordships have to determine is how the intrinsic value of the Sun Life building is to be ascertained and what is the ultimate criterion of its worth."

"They went on to consider the market test and the rentable value test and, having rejected these, they said:

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D.L.

(Mr. Genest)

"Of the three methods mentioned above, the most accurate is undoubtedly to appraise the cost of the building, since in that way it is possible to discover within limits what the building ought to have cost and to avoid a calculation based upon an expenditure which may be excessive for the work done, either because the price paid was too high or the execution indifferently carried out."

So here you have what was then Canada's highest judicial tribunal determining that in a case where facts are very similar to that which will be applicable to the Hydro head office, that the term "actual value" means replacement. — I say "cost," I should say "replacement value." You should correct that. Now, contrary to what was constantly suggested by Mr. Shibley in his cross-examinations on the subject, it is Hydro's submission that the wording of the formula has precise meaning, that it will operate in Hydro's favour if the replacement value of the building is less than \$34 per square foot. It ensures that what Hydro will be paying for is a building worth \$34 a square foot and that Hydro will be getting value for its money.

Now it's true that the formula allows for a reasonable builder's profit in the appraisal process in the event that the normal costs of construction as estimated by Manscomb Roy are less than \$34 a square foot. You have to allow McGee to say, ~~well~~ "Well, the replacement cost would include a reasonable builder's profit". But bear in mind the closer

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that gets to \$34 the less meaning ~~number~~ there is. If you get a building that is estimated with a replacement value of \$33.90 a square foot, ^{t/} the only thing you get there is a dime. That's the only construction profit there is because over \$34 the formula doesn't apply any more. I hope that's clear. Mr. Hodgson, you are looking a little puzzled.

Mr. R. G. Hodgson: I understand.

Mr. Genest: Thanks.

Mr. R. G. Hodgson: I think you are making a very good case.

Mr. Genest: Now that's a long way [✓] I say this compromise, this appraised value compromise is a long way from the formula ~~that~~ that Canada Square were pressing on us in the later stage of negotiations. ~~we~~ ^{They} went so far as to suggest you should value the income stream. I say the formula is a reasonable compromise. And bear in mind, I think Mr. Finlayson has made the point but I want to repeat it, that the formula could be worse for Canada Square than a straight cost formula. Let's say there was an elevator strike like we had just a few months ago, and the project is tied up for a year. Now think of the cost of that to Canada Square. Let's say Hydro people walk out and throw a picket line around that site. Now all these things, ~~they are not just speculations; they could easily have happened~~ recently, ~~or~~ they could very easily happen in the future. And that's a risk that Mr. Moog is faced with. But a year's strike or a six-month ~~or~~ strike could add immensely to the cost of this building. Just think of the interim financing

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for six months. It's just extensive. And that is not reflected in 1975 in the appraised value of the building. The fact that he had a strike doesn't add any value to the building and that's at his risk. If we make him replace defective work, a cost formula would of course include that in his cost but he doesn't get any credit for it. It's a cost to him, it's an expenditure out of his pocket, but he doesn't get any credit for it in the appraised value method.



(Tape 2664 follows)

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~~It is a very simple formula. It is an expenditure and it is a very simple formula. But the expenditure is very small and it is the expenditure value method.~~

So I say that, while we didn't get what we set out to get in that particular negotiation, we did get a formula which would ensure that the rent Hydro paid would be reduced if the replacement value of the building fell below \$34 ~~per~~ a square foot. And I say that's not an unreasonable compromise and that the commissioners are not deserving of the criticism implied throughout the questioning of witnesses on that issue.

I'll now talk about benefits to the parties. No one has questioned that Hydro derived substantial benefits from entering into the transaction with Canada Square. The exhibits are replete with the figures showing the enormous savings from which Hydro will benefit from the transaction. Instead of arranging for the building of its own head office, Hydro could have gone on renting premises. No landlord would have made a deal with Hydro for a firm rental for 30 years. Hydro would have been faced with an escalation of rents at least every 10 years. Moreover, 30 years from now Hydro would still be renting. It is a unique feature of this transaction, ^{and} there aren't very many in Canada, ^{that} Hydro's rent is, in the very beginning, less than comparable rent for comparable space - it never rises over the 30 year period - and, at the end of that time, Hydro own a quality building free and clear. Throughout the whole course of this hearing no one, least of all Mr. Anson-Carterright, ^{has} attempted to analyse the benefits to Hydro of this transaction. And yet this is essential if you're going to be able to decide if Hydro got a good deal. This committee, if it is to find out whether the benefits to Hydro, and the benefits to Canada Square, are in proper balance, must take serious account of the benefits to Hydro.

Let me pause here and ask you to look around town and see what that building - what's that worth to Hydro - the fact that 30 years from now it's going to have a building free and clear. Look around for 30-year ^{old} buildings. The Sterling Tower; the

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Victory Building, the Canada Permanent Building on Bay Street; the Canada Life Building on University Avenue, these buildings are worth one heck of a lot of money today. Thirty years ago today, is ~~the~~ 1943, and that is a very substantial benefit to Hydro and, it seems to me, that throughout the course of these hearings not enough attention has been paid to that.

Now - Benefits to Canada Square! Here, I'm going to ~~a~~ get angry. My respectful submission is that the most valuable document produced at this inquiry with which to judge the ~~a~~ benefits given to, and the risks taken by Canada Square, is not anything produced by Mr. Anson-Cartwright. It's exhibit 235, Mr. Chairman, I'm not sure I've got the number right, that's Mr. Nastich's calculations of the cash flow to be expected under the assumption set out by them. That document stands uncontradicted. Mr. Anson-Cartwright considered it, was not ~~quite~~ critical of it, I don't think, in any respect. It illustrates clearly - and this is very important - "that the chance of benefit and the risk of loss left entirely on Moog's success ^{with} the commercial areas." That document, gentlemen, shows that if the commercial area is a bust Canada Square loses money. If Canada ~~the~~ Square can make a go of the commercial areas, they stand to make a lot of money. If they really make that a success they will make a lot of money, but, bear in mind, so does Hydro. If the rents take off in the concourse area, in the shopping area, Hydro gets half of them. That is, I say, a fair balance of benefits, because Moog could be stuck with a white elephant at this corner and that's the risk he's taking. If he makes a go of it he is entitled to be compensated in a manner commensurate with the risk.

This brings me to the Anson-Cartwright report. In my respectful submission, Mr. Chairman, this is a one-sided sensational document to which no weight should be given by this committee. More than anything that has happened in this ~~inquiry~~ inquiry, the headlines published following the filing of Mr. Anson-Cartwright's report as an ~~exhibit~~ exhibit, have inflicted


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a grievous and unjustified injury on Hydro. I refer there to the
\$17.5 million
~~12.5 million~~ figure which appeared in every headline on Saturday,

(Tape H-2665 follows)



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(Mr. Genest)

~~Figure which appeared in many headline on Saturday~~ and the fact is that the figure is meaningless. It is based upon an assumption, which I have never heard before used in any projection of profits from the terms of a contract, that the figure should include the profit, compounded, derived from a re-investment of the cash flow derived from the transaction. It is just incredible to me that that should be regarded as a serious method of evaluating a benefit.

Mr. Finlayson has referred to — you know, you could treat almost any sum — a salary, an employment contract. If you value the terms of a football player's contract over five years; the press always call that a million dollar contract, because over five years he is going to receive a million dollars. They don't pay any attention to his investments. He may lose it. And, you know, apply that for instance to a company like Anglin-Norcross, who were well known several years ago, and have gone down the drain. The re-investment of the cash flow isn't going to be in government bonds by a ~~builder~~, it is going to be in ~~other~~ projects, at which he is at risk, and if you are going to take the re-investment into account you have got to take the risk of loss into account, as well as the risk of benefit.

Mr. Deans put it the way I like to put it. You are not concerned with what Moog is going to do with the money he gets from this deal, and you shouldn't be concerned, and Mr. Anson-Cartwright shouldn't have been concerned with it, and it has resulted in this sensational figure that has no meaning in reality, and I can't object more strongly to its insertion in the report.

Mr. Anson-Cartwright himself said "you know, that is really not an important figure." What you have got to look at is the present value of those total earnings, and the strangest thing in this report is that if you ignore the re-investment feature, you get a present value that is exactly the same. Now I ask this

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committee why mention the \$17,500,000 at all if it wasn't to create a sensation?

You know, I have had Mr. Lamb, our financial man, apply this theory to our savings and if you say that we re-invest the savings on the theory used by Mr. Anson-Cartwright, this is a figure I would like to see in the headlines: ~~we saved~~ ^{\$260 million} ~~two~~ hundred and - I said ~~it~~ ^{it} is \$260 million, and it's a meaningless figure.

Another very serious criticism I have is that no satisfactory explanation was given by Mr. Anson-Cartwright for the absence, in the final version of his report, of the cautionary words which appeared in his first draft. I read them into the record and I never heard him explain why he left that out of his final version:

"This method of evaluating investments is not a usual method, and can be misleading," etc.

Now Mr. Anson-Cartwright was called to give evidence as the committee's witness. It was his duty to be fair and impartial and to present both sides of the coin. In my submission, in his report, he fails utterly to meet that standard.

Another thing that made us angry, Mr. Chairman, is Mr. Anson-Cartwright's treatment of capital cost allowance. There is not one word in that report as to what I say is the practical certainty, if you read that Department of National Revenue bulletin - the practical certainty that Canada Square will not be allowed to take capital cost allowance in its tax returns.

Now Mr. Anson-Cartwright admitted that there was doubt. He said he had kept it out because he didn't want to hurt Canada Square. Well, surely his duty was to present a fair picture? And if you look at that bulletin and you apply those six tests - I think Mr. Walker referred the witness to them - the six ~~tests~~ tests that are laid out in the bulletin to find out if capital cost

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(Mr. Genest)

allowance would be disallowed. They barely passed one of them.
As I say, if there is only one that you can't pass, your claim
will be disallowed, ^{Well's} ~~and~~ he hardly passes any of them.

Now that makes a very substantial difference and before
I deal with it, let me ask you to turn to Mr. Cartwright's
report and see ~~he attempted, once that doubt was brought to~~
~~his attention - he attempted to say well that -----~~

Tape H - 2666 follows

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~~he attempted to say~~ that doubt was brought to his attention he attempted to say, "Well, that's all right, if we figure alternative ways he still gets a big dollar ~~and~~ ^{??} ~~and~~ he didn't produce the figures. But look at the big build-up he gives ~~the~~ the benefits of this capital cost allowance in his report (page 16). ~~well~~, I won't bother taking the time but make a note of that, you'll see ~~and~~ he builds that up as a tremendous advantage to a building. Now we haven't had time, of course, to do our figures, but I want to tell the members of the committee our own people estimate the difference in these profit figures to be at least in the order of \$2 million if you take out capital cost allowance.

Mr. Finlayson: ^{That's} on present value.

Mr. Genest: ^{\$5 million} On present value. It takes the present value from ~~five~~ down to \$3 million.

I want also to call attention to one more fact. I don't that on page 29. When Mr. Anson-Cartwright was criticising us in other aspects he called it twice at this hearing, ~~and~~ ^{He} "This isn't really a lease, it's a long-term sale." He did that twice in his evidence when he was dealing with another matter, ~~and~~ look at page 19, the second paragraph of page 19, He says, "This is a relatively new type of lease arrangement not at present ~~present~~ ^{prevailing} in Canada, which in leasing jargon in the United States might be termed a ~~lease-lease~~ ² ~~the~~ ⁶ pseudo-lease ² in my view ~~may be~~ ^{may in} certain circumstances be tantamount to a debt security." Now apply that to the Department of National Revenue Bulletin, ~~This~~ ^T "This isn't really a loan, it's a pseudo-lease, it's a phony lease, it's really a sale. And ask yourselves whether any man could reasonably expect to get capital cost allowance. And I say the answer is quite clear."

Now having admitted that there is doubt as to whether capital cost allowance could be claimed it seems to Hydro that elementary fairness on the part of Mr. Anson-Cartwright

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would have required that the doubt be reflected in his report and that the committee should have been at least provided with an ~~alternative~~ set of figures based on the assumption that capital cost allowance could not be claimed. As I said, you know, the difference is enormous. Look at ~~the~~ appendix A of this report, Situation 1. ~~First of all you'll find the load on the front end of this, the great benefits he gets from tax deferral on the profits by reason of his not having to pay any tax and getting a high cash flow in the first years. Well now, that's not if capital cost allowance isn't allowed. But also very importantly Mr. Anson-Cartwright tells you in Appendix A, and he deals with the marvellous benefits of this at some length in the body of his report, that there is a terminal loss of \$2,697,000, the present value of which is \$831,000—that's added to the present value of this contract. And I ask you, gentlemen, to ask yourselves this: Would you, the business men among you, would you pay \$831,000 for the possibility of getting this money some 30 years hence, with that bulletin in front of you? It's ridiculous.~~

Now, he was pressed on this subject, Mr. Anson-Cartwright was, and he took refuge in some general statements that ~~there are~~ substantial benefits. No figures were provided the committee and my information from Mr. Shibley is that he has never prepared any such figures.

I want to deal again with another instance of Mr. Anson-Cartwright's fallacious calculations. Look at the factor which he uses to arrive at present values. He's saying, "What's it worth? What would you pay today to get the benefit of these payments over 30 years?" He uses eight per cent and that's the rate that a government bond brings in, the safest investment there is.

~~In the original report at page 6 he says there will be a great benefit from the government etc.~~

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^{at}
~~In his~~ body of his report, ^{page 62} he says ~~that~~ there will be "a probable discount for risk performance," etc." But he doesn't reflect it in his eight per cent rate and he fails to provide any rational explanation, in my submission, for his failure to reflect at least the risks. He's admitted himself there's a doubt. ~~Now~~ He's gone that far. He's got the bulletin. He knows he's got a lawsuit on his hands and his discount rate doesn't allow anything for that. It's just not right. It's not fair. My submission is that the discount rate is ^{more} ~~up~~ in the order of 15 per cent and, even that, you have to be your own judge of what you'd apply for the chance of getting that when you know the trouble that's on the way. If you apply a realistic discount rate it makes another big difference to these figures. It seems to me, again, elementary fairness would have required that ~~you~~ another set of figures at a different discount rate should have been provided for the benefit of this committee.

Mr. Anson-Cartwright went to great lengths to say that he based his estimates on "reasonable assumptions." I want to say another thing about capital cost allowance, because it wasn't brought -- we were all pretty tired last Friday ^{and} ~~it~~ it wasn't really brought out. If you look at his script on the benefits of capital cost allowance you'll see that he placed a good deal of attention to the fact that the terminal loss shelters income from other sources; that the ability to get a tax deferral, or claim capital allowance could shelter other income. It seems to me he doesn't take into account the evidence that Canada Square, as far as this deal is concerned, is going to be a single-purpose corporation with no other income. And I think in the examination at the end of the day, Mr. Anson-Cartwright admitted that the value of a loss ~~carried~~ forward to this company wouldn't be available. If it had a single purpose it would be a change in business, ^{that} ~~but~~ acquiring another building at the end of 30 years it couldn't get the value of this terminal loss to carry as a loss against other income from another building.

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I make the point here, very briefly, that he's made assumptions in calculating profits on the basis that there is no profit on the maintenance and that there is a profit of 10 cents. It seems to me that if ^{he} ~~you~~ wanted to be fair about it he would ~~also~~ have also maybe assumed a 10 cent loss, in view of Mr. Zwig's evidence as to what's happening to maintenance rates.

Another criticism I have is that having set out the terms of his engagement, or the terms ~~conditions~~ of this agreement, *he was* ~~not~~ going to help the committee on this question: "Are the terms of the agreement as they affect Ontario Hydro, financially and economically sound?" We don't have one word, not one word, in this report as to the benefits obtained by Ontario Hydro. I've said this before, "The major benefit conferred on Hydro is the ownership of a building at the end of 30 years while, in the meantime, paying less than the going rate for comparable space. Nowhere in this report is that mentioned, or is there any ~~one~~ attempt to measure that value. I ~~am~~ submit this is a ~~very~~ signal failure and leads Hydro to the conclusion that he's regarded his role as that of a prosecutor and fault-finder rather than that of an impartial interpreter. And I therefore ask the committee to disregard Mr. Anson-Cartwright's report in its entirety and to look to Hydro's calculations for a true measure of the benefits to be expected by Canada Square and by Hydro.

They will show that these several ~~many~~ benefits are in fair ~~balance~~ balance and that Canada Square is not more than properly compensated for ~~take~~ its risks. ~~Again~~ They'll show that, in fact, Hydro did get a good deal; that, in the words of question one, the terms of the agreement as they affect Hydro are financially and economically sound.

I have a few closing remarks, Mr. Chairman. I'd just like to recall ^{to} ~~the~~ the committee the atmosphere in which these hearings were held. There was a microscopic examination of every step taken in a complex transaction by persons subject to the frailties of the human race. There are very few human activities that can

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type of
withstand this ~~examination~~ without some mistakes being found.
Even Mr. Shibley might admit, that on a close examination of the
a manner ~~in~~ in which these proceedings were ~~conducted~~ conducted,
some things might have been done differently. And I ask that the
committee, in writing its report, should put away the ~~the~~ microscope;
~~and~~ leave behind the atmosphere of innuendo and suspicion which,
giving Mr. Shibley his due, is a technique that is designed to
uncover the truth but is very unpleasant to the people who are
undergoing it; but leave behind the atmosphere of innuendo and
suspicion in which most of the questioning took place;

(Tape H-2668 follows)

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(Mr. Genest)

~~I leave behind in the atmosphere of innuendo and suspicion what~~
~~in at which much of the questioning took place;~~ take a view of the evidence as a whole and make your findings of fact based on the whole of the evidence and not just pick out little isolated documents and coincidental dates and make inferences. If you take this broad approach, Hydro is confident that justice will have been done.

That is the end of my submissions Mr. Chairman. I just wanted to add a personal note. I have never had an experience like this in my life. I spent more time with this committee over the last four and a half months than I have spent with my family. Notwithstanding our little quarrels, I have grown to have a good deal of respect for everyone here, Mr. Chairman, with your good humour, unfailing good humour and sometimes in difficult situations. I feel that personally each one of you is a friend of mine, and my relationship with this committee is one that I have enjoyed very much and I have also much admired the care and the conscientiousness in which you have gone about your duties. Thank you.

Mr. Chairman: Thank you very much, Mr. Genest. You have had a difficult role and ~~performed~~ performed it well, and I have a few comments to make on that later on. Your summation has been a good summation and that, together with the one of Canada Square will I know be very helpful in the committee doing its task of preparing the report, and they will be examined much more thoroughly in the next few days than they have been examined in the time we have listened to them this morning.

Now Mr. Shibley, likewise, would like to make a few remarks. Mr. Shibley is in the enviable or unenviable position, depending on how you look at it, of going into the jury room with not only the ~~eleven~~ eleven members of the jury, but the judges as well, and ~~with~~ with ~~that~~ that in mind he will have opportunity to comment on the evidence and when the report is being written, and we realize in so ~~doing~~ doing he has an advantage, that the two ~~solicitors~~ solicitors or counsel who have spoken this morning ~~do~~ do not have, but I think the committee

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in its fair-mindedness will try to keep all of these things in the right perspective. However, Mr. Shibley does not now wish to comment on the evidence, but I think he has a few words or general remarks to make.

Mr. Shibley: Thank you Mr. Chairman. First I'd like to compliment counsel for Canada Square and for Hydro. I think members of this committee have had displayed advocacy at its best. I do not view it to be my function as committee counsel to publicly review the evidence by way of contradicting or supporting any view expressed by them. I would ~~not~~ not, however, want my silence respecting the submissions made to be interpreted in any way as acceptance of or agreement with the submissions that have been made, nor should it be interpreted as rejection. ~~Some~~ Some very strong comment has been made respecting matters with which I think there is very cogent evidence to the contrary. I am not going to review it. I simply say that I think counsel ~~have~~ have fulfilled their function in putting the best face possible on the position of their respective clients and I have nothing but admiration for the manner in which they have done so.

I do want to take the opportunity to make certain things a matter of public record, and the first has to do with our Chairman, John MacBeth. I think it should be known that our Chairman has, both during the course of the public aspects of this hearing, but more importantly to me, during the private discussions that I have had with him on numerous occasions, demonstrated an objectivity, a non-partisan attitude of mind in terms of his advice and his decisions as they affected the committee and as they affected my conduct, ~~the information~~

Tape H 2669 follows



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(Mr. Shibley)

~~As I have said, I have been on the committee and as they affected my~~
~~source~~ of the introduction of evidence before this committee.
At no time, did the chairman of this committee ever do otherwise
than to display, certainly to me, his complete and judicious
fairness respecting the interests of all parties affected by
the proceedings, and at no time did he otherwise than ~~so~~ encourage
me to examine carefully and in all ~~the~~ ^{its} detail, any element of
the evidence, no matter how that issue might have affected any
partisan ^a group.

And I most anxious that the record ~~of~~ show that this
committee has had the benefit of that sort of direction by the
man who has been at the throttle, so to speak, of this committee's
hearings.

The other ~~of~~ thing I wish to make a matter of record
is that the evidence is as complete as I could make it, subject
only to the limitation imposed by witnesses who were less than
frank and who were less than complete regarding their testimony.
It is my personal estimate that this hearing could have been ~~completed~~
completed in less than half the time if everyone had, from the
outset, complied with what I consider to have been their duty to
co-operate fully and honestly with this committee and its counsel.

I am not again going to review the details of those
circumstances of lack of co-operation, and lack of fulfillment
of that obligation. I think the evidence is replete with it
and needs no repetition. But I say to you that ^{that} ~~this~~ is the
only limitation which was imposed upon me respecting the
completeness of the ~~of~~ record, namely, the limitation resulting
from lack of frankness and lack of completeness in the testimony
given by certain witnesses.

I would like specifically, in that connection, to
except Mr. Genest from that comment. I want the record to show

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(Mr. Shibley)

that Mr. Genest has, as counsel to Hydro, and throughout the period of his retainer by Hydro, afforded to me the utmost co-operation and the most complete assistance, and yes, sometimes ^{to you,} advice, which I freely admit, ^{respecting} the conduct of ^f ~~me~~ this hearing. My regard for Mr. Genest is now even higher than it was when this hearing began, and I might say that I have always held ~~me~~ him in very high esteem, and I still say this in spite of, ^{and} ~~maybe~~ because of, the sense of humour perpetuated in his introduction of the last exhibit.

Mr. Chairman, I will have opportunity to ^{perpetuate} ~~perpetuate~~ my relationship with members of this committee when we deliberate upon the report, and will express myself privately at that time in terms of my own reaction to the manner ⁱⁿ which this committee has conducted its affairs. I do not feel, therefore, its necessary to comment on that at this time.

I would like to express thanks to those members of the press, who on various ~~occasions~~ occasions when called upon so ~~to~~ to do, did exercise restraint. The press has been subject to a great measure of ~~our~~ criticism at given times. It is my function view that the press has a ~~function~~ to fulfill in bringing matters such as this to the attention of the authorities ~~such that~~ ~~inquiries such as this are conducted~~.

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(Mr. Shibley)

~~in briefing matters, such as this, to the attention of the~~
authorities, that inquiries such as this are conducted, and in the chain reaction of ~~the~~ events, that public bodies are made alert of the circumstance, or to the circumstance, that the press are examining and will report upon their conduct in a manner which may well bring on this type of hearing, and although it is true that the press tends to be inflammatory at times, in terms of its reporting, I think it unfair to leave off without mentioning the reciprocal benefits that the public realize from the surveillance that is maintained by the press respecting the actions of public entities.

I have nothing further to say at this time, Mr. Chairman.

Mr. Genest: Mr. Chairman, may I just, since this is flower-throwing time and Mr. Shibley was very kind, I would like to say this, because there have been throughout this hearing a lot of loud criticisms by me about Mr. Shibley's various techniques and what he was doing to my witnesses, and so on. I do wish to say this, that I think in the conduct of this inquiry he has set a standard against which all other future inquiries will be conducted. The industry he has shown -- I don't know how he has kept the flow of witnesses coming -- the investigations he has conducted have been thorough, have been -- in some cases he is brilliant, and while I have complained, and I don't withdraw some complaints that I have made, I think that the job he has done in the service of this committee, according to his duty as he saw it, has been absolutely brilliant and no one will ever say, whatever your report is, that this has been a whitewash.

Mr. Chairman: Thank you, Mr. Genest, and to Mr. Shibley, members of the committee and to all those present, I, too, would like to make some concluding remarks.

Our appointment went back to the 1st of May, 1973, thank

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goodness, not to 1972. Our first meeting was on the 9th of May of this year. It has been a long time; at times difficult for all of us. However, Mr. Genest~~er~~ said in part what I wanted to say about the five months of close relationship that we have enjoyed, and I say that word enjoyed *advisedly*. I have indeed gained a true fondness for everybody that has followed these proceedings as so many of you here this morning have done. Not only the members of the committee but all involved. I don't think you can live with somebody as closely as we have lived without ~~it~~ getting to know their strengths and their weaknesses, and when you do that I think you develop an affection for them and that certainly applies to me and I'm sure to other members of the committee in their own relationships with those who have been present. I think that as far ~~as~~ as the committee is concerned there has been very little political prejudice shown. I won't say that there hasn't been any, but I think above all it has been slight and that there has been a common concern of all the committee members to fairly complete the task that it has undertaken. Witnesses[^] there have been many witnesses and some of them have been recalled on two or three or more than one occasion and many of them have had very stiff ~~and~~ cross-examination. They have served the public; I know that Mr. Shibley has some reservations in regard to the way some of them gave their evidence, and I think members of the committee share that, but most of them have given their evidence without recompense to themselves and as a public duty and I thank those members or those witnesses who came before us.

There have been amazing number of people involved in one of these inquiries and ~~in~~ particularly this one. And just as an example I asked Alex Jenkins to get ~~me~~ some information here and I have a letter from Peter Brannan, which I would like to read to you. It's not so much a letter as a memorandum: -

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D.L.

(Mr. Chairman)

"Paul ~~W. H. H.~~ has asked me to provide for you a list of all the people who have worked for Hansard in the coverage of the Hydro Select Committee meetings. I have therefore provided a list of all staff, permanent and temporary, and I am afraid that it is going to look like a roll of the dead of the First World War. There are so many of them. However, I am sure you realize that some of these people were involved relatively briefly, while others had their noses to the grindstone almost throughout. ~~In view of my reference to World War One I should perhaps mention that three of our regular staff members~~

(Tape 2671 follows)

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M.R.

(Mr. Chairman)

~~... In view of my reference to World War~~
One I should perhaps mention that three of our regular staff members are hors de combat as a result of injuries or sickness sustained during the battle. Our chief transcriber, Eileen McFadden, tripped while entering the elevator after a day's toil about two weeks ago and sustained a chipped right collarbone, while one other transcriber and an editor are currently in hospital. They assure me their maladies are not connected with their toils on behalf of the committee.

"The list is attached and may I say it ~~is~~^{has} almost been a pleasure despite the heat wave to serve such an understanding and appreciative committee. Sincerely,
Pete Brannan."

Now, let me just say - and I'm not going to read everybody's name in to the record here - but there have been some 37 people involved with the Hansard end of matters. Two who have been with us on the recording console, Scott Laycox and David Batho, have been with us all the time and thanks to both of you gentlemen. Recording secretaries, and they have been my joy in being able to take my eyes from time to time off counsel and look at something a little more exciting - Elaine Caverhill and Lucy Ivan.

Then I just wish to mention again Alex Jenkins and Jack White who have done so much for us. There have been offset machine operators, messengers, people of that nature, and I come back of course to our own clerk, Paul Moore, who has not undertaken a job of this size before and who has not failed us yet and has done a good job. Paul has worn out two secretaries in the process and presently he is without the services of a secretary but there are people in the background, such is that nature.

Fred Beckforth and his assistant stewards in the lounge here have worked overtime on many occasions and have been most helpful to us.

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Now there's one person whose task got heavier every day. I thought from time to time as I could see the end coming that my task was getting lighter. There's one fellow whose task got heavier every day as more material came in and that's Bill Murphy who has carried the material up and forth to the various rooms involved and tried to keep it secret, and to Bill we all owe a debt.

Now, I have a few words for the members of the news media. I've taken them to task from time to time. I think the main objection perhaps I have had is to the editorial writers and the headline writers, not to the reporters. I feel that sometimes they have jumped to conclusions before they should have and before all the evidence was in ~~and~~ ^{the} the matter.

However, generally speaking, they have performed good service. I think they have tried to be fair and accurate and as Mr. Shibley indicated, this is a public inquiry and without the press it could be an inquiry but it couldn't be public, and so I say my thanks to them.

Counsel for witnesses; they have, I will admit, provided me with some tense moments from time to time but they have all served their clients vigorously as it is their duty to do. And I think that the aggressive nature of Mr. Shibley only made it right that we should permit the counsel for witnesses as much latitude as we have.

Now, you know this was somewhat a departure from the procedure that select committees generally adopt where the witnesses may have ~~their~~ their counsel present but that the counsel have very little to do in that or have been allowed little latitude. ~~and~~ ^{we} departed, I think, and made precedent in this regard. I think it is right that we did so and you will note in the last few days of the inquiry that Mr. Genest particularly was doing almost direct cross-examination and I had some difficulty in cloaking the fact that the questions were going through me. But I think that was an exception that was

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reasonable and well-made.

On many occasions I have been of the opinion that more damage was done by attempting to maintain privilege for evidence than the adverse nature of such evidence warranted. Those accustomed to court procedures, critical of our less defined and strict rules, I say that those who are used to court procedures have been, and I think with reason, critical of our less defined and strict rules. Court rules are stringent to protect ~~the~~ accused persons, and again I would remind all of us, although you think that the chairman and the committee members have forgotten it from time to time, that this was not a trial but a fact-finding mission.

On many occasions I had difficulty in determining what was paramount, the principle of privacy, the public's right to knowledge of its own business. Now I had to weigh those all the time and I think sometimes witness counsel felt that I erred on the wrong side, but those were the things that I was trying to weigh in my mind; whether ~~to use~~ the privilege of privacy was more important than the public's ~~knowledge~~ to know what their own business was about.

~~and I think it was more important to know what their own business was about.~~

H-2672 to follow

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B.G.

(Mr. Chairman)

~~on the public's knowledge and how they their own business to~~
~~know~~ To my mind, it was frequently more important that relative information should be disclosed rather than leave the public to conclude that important or decisive information was withheld on technical rules.

Now, just a word about Mr. Shibley and his very able assistant, John BELL. John BELL and Mr. Shibley have worked, as you know, under great strain and under very heavy hours. They worked every minute while we were here, but that was only a part of their day. The rest of the time was spent in preparing the case away from here and on weekends, and I really don't know what sleep or what rest or relaxation they have had in the past five months.

Mr. Bell, I think, has been with Mr. Shibley almost continually, and he was the one, if you sometimes thought Mr. Shibley was getting a little energetic or a little exercised, Mr. Bell, I know, was the one who calmly put his arm on his shoulders and told him to take it easy, and Mr. BELL has borne hearing a great deal of this and ~~was~~ on his shoulders as well.

I reminded Mr. Shibley from the start that he was not counsel for the chairman, ~~he~~ was not counsel for any particular party, but that he was counsel for the entire committee. Now, all of us have had an aversion to in-camera sessions, but I think we found it difficult to give proper instructions to our solicitor without having some sort of executive, or in-camera sessions. I know the press has been critical of us going into in camera, but I think that since we started to use them that they have shown their advantage, and I would ask the press that perhaps in future, if these committees are ever held again, that they should be more tolerant of permitting the members of the committee to sit down in private with their counsel so

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that they will know where they are going. IN that way I think it will save the committee time, I think it will save the public time and avoid some of the conflicts that we have had.

Now, those, I think, are the words that I have for all of you. It's been a long, hot summer; ~~and~~ it's been a difficult task for all, but I think that we are all happy that our labours have now been almost completed. I hope that the report will be worthy of the efforts that have gone into it. I don't think from that that it necessarily need to be a long report, but I hope that we will now come out with a ~~and~~ fair and accurate report on what actually took place.

Is there anything else that anybody has to say?

Mr. Wm. Newman: Only one request, Mr. Chairman,

Mr. Chairman: Yes, Mr. Newman.

Mr. Wm. Newman: When we have finally written our report. Remember, paper is worth \$10.00 a ton. We might recoup some of the cost of the hearing.

Mr. Chairman: Maybe we can recycle it to help heat Hydro. I don't know.

Mr. Genest: We don't want it.

Mr. Chairman: You don't want it. Ladies and gentlemen, these public hearings are now concluded. Thank you all.

The committee concluded at 12:44 o'clock, p.m.

APPEARANCES

Committee members:

J.N. Allan

J.E. Bullbrook

I. Deans

M. Gaunt

L.C. Henderson

R.G. Hodgson

W. Hodgson

J.P. MacBeth (Chairman)

W. Newman

J.A. Renwick

G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC

James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC

Gregory Rice

G.D. Finlayson, QC

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